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Washington, Tuesday, October 24, 1939

The President

EXECUTIVE ORDER

EXCEPTING APPOINTMENTS IN THE UNITED STATES CORONADO EXPOSITION COMMISSION FROM THE REQUIREMENTS OF THE CIVIL SERVICE ACT AND RULES

By virtue of and pursuant to the authority vested in me by the provisions of paragraph Eighth of subdivision SECOND of section 2 of the Civil Service Act (22 Stat. 403, 404), it is hereby ordered that appointments to positions under the United States Coronado Exposition Commission established by the act of July 17, 1939, Public, No. 186, 76th Congress, may be effected without regard to the competitive requirements of the Civil Service Act and Rules.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
October 21, 1939.

[No. 8273]

[F. R. Doc. 39-3910; Filed, October 23, 1939; 11:24 a. m.]

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Commodity Loan Regulations No. 1, Supplement No. 1]

REGULATIONS GOVERNING INSPECTION AND SEALING OF AGRICULTURAL COMMODITIES ON THE FARM TO BE USED AS COLLATERAL FOR LOANS, AND THE COMPLETION OF LOAN DOCUMENTS

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act of 1938, as amended, Commodity Loan Regulations No. 1 are hereby amended as follows:

SUPPLEMENT NO. 1

Article I

Section 104 is deleted and the following substituted in lieu thereof:

Treasurer. The treasurer of each county agricultural conservation association, or a person designated by him, shall collect the fees, provided in these regulations, and shall account for and disburse such fees under the direction of the county committee in accordance with instructions issued by the Agricultural Adjustment Administration. Such funds shall be audited in the same manner as all other funds of the association.

Article II

Sections 203 and 204 are deleted and the following Section 203 substituted in lieu thereof:

Service fees. Persons obtaining or applying for a loan shall pay to the treasurer of the county agricultural conservation association, or a person designated by him, a service fee as determined by the Agricultural Adjustment Administration, to defray the expense of inspecting, sampling, testing, grading and sealing the commodity with respect to which the loan is made or applied for and otherwise servicing the loan. A part of the service fee may also be used to defray the cost of secondary insurance on the loan collateral. In connection with each loan program as to which the Agricultural Adjustment Administration determines that a service fee shall be charged, such Administration shall issue instructions governing the rate of the service fee and the collection and disbursement thereof. Such instructions may provide for such regional, State or county differences in the rate of the service fee and the manner of collection and disbursement thereof as the Agricultural Adjustment Administration determines are desirable in order to obtain a fair and reasonable fee and an efficient and practicable procedure for the collection and disbursement thereof.

Article II

Sections 205, 206, 207 and 208 are renumbered Sections 204, 205, 206 and 207, respectively.

Done at Washington, D. C., this 21st day of October 1939. Witness my hand

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and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-3904; Filed, October 21, 1939; 12:22 p. m.]

TITLE 19—CUSTOMS DUTIES

BUREAU OF CUSTOMS

[T. D. 49992]

CUSTOMS REGULATIONS OF 1937 AMENDED SO AS TO AUTHORIZE COLLECTORS OF CUSTOMS TO USE EITHER CUSTOMS FORM 3193 OR 7500-A AS A PERMIT TO TRANSFER UNENTERED MERCHANDISE TO A GENERAL ORDER WAREHOUSE; ELIMINATION OF IMPLICATION THAT A NONRESIDENT CONSIGNEE DOES NOT HAVE THE RIGHT TO MAKE AN ENTRY OF MERCHANDISE BY AN AGENT [1]

To Collectors of Customs and Others Concerned:

The Customs Regulations of 1937 are hereby amended as follows:

Paragraph (a) of article 145 [2] [Sec. 2.17 (a)] is hereby amended by deleting "(customs Form 3193)." (Secs. 448, 457, 490, 624, 46 Stat. 714, 716, 726, 759; 19 U.S.C. 1448, 1457, 1490, 1624)

Paragraph (d) of article 289 [3] [Sec. 6.8 (d)] is amended by deleting the words "who appears in person at the customhouse." (Sec. 484, 48 Stat. 722, sec. 12, 52 Stat. 1083; 19 U.S.C. 1484 and Sup. IV)

Paragraph (a) of article 1007 [4] [Sec. 18.1 (a)] is hereby amended by deleting "(customs Form 3193)." (Secs. 490, 624, 46 Stat. 726, 759; 19 U.S.C. 1490, 1624)

[SEAL] BASIL HARRIS,
Commissioner of Customs.

Approved: October 18, 1939.
HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 39-3909; Filed, October 23, 1939; 10:45 a. m.]

TITLE 24—HOUSING CREDIT

UNITED STATES HOUSING AUTHORITY

PART 636—REHOUSING OCCUPANTS OF AREAS TO BE CLEARED FOR HOUSING PROJECTS*†

Sec.
636.0 Scope and content.
636.1 Purposes to be achieved in relocation.
636.2 Procedure in relocation.

§ 636.0 *Scope and content.* This bulletin deals with the relocation by the local housing authority of occupants of slums to be demolished prior to the construction of a low-rent housing project on the site to be cleared.*† [Introduction]

§ 636.1 *Purposes to be achieved in relocation.* (a) Remedying the unsafe and insanitary housing conditions of families of low income is the primary purpose of the United States Housing Act of 1937. This can be accomplished only if the local authority assists families who are moved out of buildings to find accommodations better than those being vacated. New slums must not be created nor must existing slums be spread or made more congested.

(b) Clearing of the site can be expedited and legal actions involving evictions can be avoided by evidencing an interest in the problems of the families to be relocated. While the responsibility of moving is in part that of the occupants, it is wise to avoid antagonizing them and instead to enlist their cooperation by counseling with them regarding their individual problems and needs.

(c) Factual data concerning the occupants of the area to be cleared will be of help in explaining to them the benefits they will derive from the slum clearance program.*† [Par. I]

§ 636.2 *Procedure in relocation.* It is suggested that the local authority proceed with relocation along the lines suggested below:

(a) Establish an office in a building on the site easily accessible to the tenants. It will be advisable to employ a limited personnel for a short period to answer inquiries and supply information. It will be helpful to have a map of the area, with each family unit represented by a push pin or some similar device. As dwelling units are vacated, the pins can be removed, thus indicating progress made in vacating the site.

(b) Make a study of the families on the site to secure the following information:

(1) Number of persons in the family.
(2) The number of rooms occupied.
(3) Facilities and general condition of the dwelling.
(4) The rent the family is paying.
(5) Income and economic condition of family.
(6) General location preferred in relocating.

Such information should be recorded on forms which are available on request from the USHA.

(c) List available vacant dwellings which are more habitable than those being vacated, with rents not substantially higher, and keep this listing available in the relocation office for the use of tenants. This information may be secured through publicity, from real estate agencies, and from other sources. Daily and community papers should be kept informed on the work being done. Real estate and social agencies should be consulted from the very outset, so that

[1] This document affects 19 CFR 2.17, 6.8, and 18.1.
[2] 2 F.R. 1484.
[3] 2 F.R. 1513.
[4] 2 F.R. 1668.
*Sections 636.0 to 636.2 issued under the authority contained in Sec. 8, 50 Stat. 891; 42 U.S.C., Sup. IV, 1408.
†The source of Sections 636.0 to 636.2 is Bulletin 10, June 30, 1938.

their support as well as their advice may be secured in meeting the problem of relocation.

The following information should be secured with respect to each vacancy listed:

(1) Number of rooms in dwelling.

(2) Facilities and general condition of unit.

(3) Rent of dwelling.

(4) Location.

(5) Proximity to schools, churches, and shopping center.

(6) Name and address of landlord and where keys may be obtained.

(d) Determine kind of assistance needed for each family on the site and from what sources help may be obtained.

(1) Economically self-supporting families should need no assistance other than being supplied with a list of available vacancies.

(2) Relief and near-relief cases will require the assistance of social agencies. Experience has indicated that relief and social agencies prefer to have their own case workers interview relief families who must be moved and to make all arrangements for them. The moving of such families should be the responsibility of relief and social agencies.

(e) Maintain reference files on relocated families including old and new rent, housing condition and address. This will be of material assistance later when question arises as to whether or not, through relocation, housing conditions have been improved. Such information should be recorded on forms which are available on request from the USHA.

(f) Post "No Trespass" signs in conspicuous places, both front and back, after a building is completely vacated. This will prevent reoccupation of the premises by squatters. It may be found advisable to board up entrances.

(g) Maintain some type of watchman service to prevent vandalism, if the salvage value of the buildings warrants this expense. This is recommended in those instances where there is a lapse of time between the vacation of the buildings and the start of demolition.

(h) Request assistance from the United States Housing Authority if it is desired. When necessary, USHA representatives experienced in the problems of relocation will furnish guidance in the field.*† [Par. II]

NATHAN STRAUS,
Administrator.

OCTOBER 12, 1939.

[F. R. Doc. 39-3889; Filed, October 21, 1939; 9:22 a. m.]

PART 635—PLANNING THE SITE*†

Sec.
635.0 Scope and content.
635.1 Basic design principles.
635.2 Design and organization of the site.
635.3 Design and treatment of open areas for recreation purposes.
635.4 Plant and planting materials.

§ 635.0 *Scope and content.* In this Part the factors governing site planning and development are discussed. These include the uses and treatment of open spaces, provision for leisure-time activities of both children and adults, and the organization of common services. The Part is divided into four sections. Sec. 635.1 treats of the basic objectives in the design of housing sites, and the standards by which the attainment of these objectives may be measured. In Sections 635.2, 635.3 and 635.4, the technical considerations in the design of the site plan and the various steps of its development are set forth. Types of site plans which are appropriate to various climatic and topographic conditions and other local factors are illustrated. Characteristics of different site plans, the influence of building types, materials and methods in the treatment of open spaces, and the organization of communal services are discussed.*† [Introduction]

§ 635.1 *Basic design principles* — (a) *The superblock.* Modern residential planning practice has evolved certain basic principles which, through testing and demonstration in use, have come to be accepted as fundamental. Primary among these is the superblock, a relatively large area, usually containing one or more common open spaces, and bounded in whole or in part by through traffic streets, but not intersected by such streets. Cul-de-sac or dead-end streets, branching from a circumferential traffic street, may be used to give internal access; or through streets, so reduced in width or so placed and shaped as to discourage any but local interior traffic, may serve the houses within the block. Many varieties of the superblock are possible, and one or more of these may be used as the basis for the organization of the site plan. Directly related to the superblock are a number of corollary principles, including:

(1) The articulated street pattern. This is the design and construction of streets and walks to serve particular functions, i. e., through traffic, local traffic, service lanes, pedestrian walks, etc. This results not only in economy of paving and utilities costs, but gives privacy to residential areas and freedom from traffic hazards. Instead of planning all streets for an anticipated, and in most instances unrealizable, future intensity of land use based on the hope of business or industrial expansion, streets should be designed and constructed for the particular use which they can best serve in accordance with a neighborhood and city plan.

(2) The appropriate planning for use of all open spaces, and arrangement of buildings on the site to give cencentration of these spaces. Some of these spaces will be maintained by the project as common open areas for recreation and group activity; others—and insofar as possible these should be the greater part—by the tenants. In some cases tenant groups or clubs may assist in the maintenance of common spaces. A rough measure of the success of a housing project is the extent to which tenants participate in the maintenance of the public spaces. The application of these principles will reduce traffic hazards and noise, increase privacy, integrate play areas with dwellings, and protect the project from deteriorating outside influences.

(b) *Organization of open space for use.* A housing project must contain spaces, enclosed or open, for the service and pleasure of the people living in it. Some of these spaces will be private, others for public use, for gatherings and recreation, or for passageways from one part of the project to another. All these spaces must be organized—arranged, divided and allocated, enclosed and surfaced—so that they may provide for maximum use by the tenants. Large "Keep off the grass" lawns have no place in a low-rent housing project. Odd, left-over areas, serving no particular purpose should be avoided. On the other hand, play spaces, and yards which may be used as sitting-out areas or cultivated by the tenants, are important for recreation and relaxation.

(c) *Tenant-maintained areas.* To aid in maintaining low rents, as well as in cultivating self-reliance, the United States Housing Authority recommends the policy of placing upon the tenants as much responsibility for the maintenance of both house and land as is feasible and economical. This will usually be achieved by arranging much of the open space for the private use of individual families who will be expected to maintain it and care for it and use it as their own. This accords with American custom. In housing projects consisting of row houses, of flats with private entrances, or of single or twin houses, all the land except that part which is needed for common use may well be allocated to

*Sections 635.0 to 635.4 issued under the authority contained in Sec. 8, 50 Stat. 891; 42 U.S.C., Sup. IV, 1408.

†The source of Sections 635.0 to 635.4 is Bulletin 11, May 1939.

such tenant-maintained yards. The apartment superblock, on the other hand, introduces difficulties in accomplishing this objective. The non-apartment type of development is, for many reasons, usually to be preferred, especially in those localities where the care of private yards is customary, and interest in gardening is general. Visible demarcation of private yards is important to develop in the tenant a definite feeling of possession and responsibility. If the limit of this responsibility is visibly marked, the fruit of his labor and care is more definitely apparent to himself, his neighbors, and his guests; and thus his satisfaction is enhanced. Where tenants are assigned a share of an unenclosed space, their care of it often tends to be perfunctory. Walks, shrubs, or fences are satisfactory division marks. Even posts from which wires can be strung to the building may be used successfully to divide yards. As is usual in private yards, there should be provision for drying clothes. A sitting-out area, surfaced perhaps with brick, is an attractive and useful feature which requires practically no care. In the remaining area, the tenant should be able to cultivate grass, flowers, vegetables, and vines, according to his choice.

(d) *Project-maintained areas.* Under some conditions, the effective maintenance of private yards is not likely to be attained. In such cases, the open space must be planned and located for economical maintenance. Sometimes a skillful use of topography in the site plan will leave existing natural landscape features as open space in the plan requiring no maintenance, planting, or upkeep. The recreation needs of the project population require the development of project-maintained common areas such as play lots for the preschool-age child, sitting-out places for adults, and areas for active recreation for adults and school-age children. The technical development of recreational areas is explained in Sec. 635.3. Economy demands compactness of lay-out even when land cost is low and plenty of land is available. Most items of site-improvement cost are almost directly proportional to the area covered, such as grading, planting, streets, walks, storm sewers, and all utilities. Collaboration with a site engineer is essential if maximum economy is to be obtained. Maintenance of grounds, yard lighting, and other operations are also proportional in cost to the area which they cover. Land which is not needed for housing is generally most useful and most economical to maintain if it is kept in relatively large units of area, instead of being broken up into many small pieces.

(e) *Planting and surfacing.* Planting should contribute to the beauty of the project, but should serve a useful purpose as well. The planting scheme should not be thought of as an opportunity to create beautiful scenery as a setting for neat brick houses to impress visitors and passers-by. Used to demark the various use areas of the ground, and as screens and barriers, it may serve a definite need as well as enhance the appearance of the project. Since the land of a housing project is for the use of its many inhabitants, and not a formal garden for the eye delight of a few, all areas must be treated as use areas for some purpose. Surfacing materials must, therefore, be selected to be suitable and satisfactory for their intended use. Trees, shrubs, and plants must be hardy, requiring little attention. Low maintenance cost is, as always, a determining consideration. The clipped grass lawn has been so generally used as an outdoor surface in the past that there is a tendency on the part of many who design and specify the surfacing of areas in low-rent housing projects to assume that these areas will be chiefly lawn. When kept well trimmed and otherwise properly maintained, a lawn is probably the most beautiful and satisfying of all surfaces. However, to maintain a clipped grass lawn in good condition is very costly. It must be mowed regularly, watered frequentliy in summer, fed with fertilizers several times a year, weeded, and reseeded in part once or twice a year. To do all this on any appreciable public area is a burden of cost which may not rightly be imposed on the tenants of a low-rent housing project. If this standard of upkeep is not maintained, the lawn rapidly becomes a bare space with tufts of plantain, crab grass, and other weeds, dusty in dry weather, and muddy in wet weather. A clipped grass lawn is therefore not a desirable surface for the public areas of a low-rent housing project, except for those limited areas where its special maintenance requirements may reasonably be met. Most of the open area of housing projects must be surfaced with something other than clipped lawn. However, the problem of maintaining a lawn varies widely in different climates. Rough meadow grass allowed to grow without mowing can often be used to advantage in the larger areas. It looks well, is satisfactory for some forms of play, and requires relatively little upkeep. Areas subject to more intensive use will need a harder surface, such as some form of bituminous or composition material or paving—brick, concrete blocks, random paving, etc.—or gravel, depending on use and location. At suitable intervals, such areas may be broken up with small islands of green. Their location must, of course, be determined with due regard to free and unobstructed use of the open areas for recreation, and with due regard to esthetic effect. These islands, of varying size and shape, may be planted with hardy shrubs, ground covers, or beds of flowers. Areas designed for quiet recreation and surfaced with gravel, or other materials, may be planted with trees, few in number, but substantial in size. A dozen moderately large trees will give much needed shade and a restful appearance. It will often prove possible to enlist the interest of a group of tenants to care for these trees or a few small "islands," planted in flowers, when the same group of people could not possibly be interested in mowing or weeding a lawn. A group of children or even adults can readily be made to regard a particular tree or two or three trees as their own personal property, for whose well-being and beauty they are responsible.

(f) *Leisure time and recreational needs.* The way in which residents of a housing project may spend their leisure time is of great importance in determining the development of the land. The greatest attention should be given to the kinds of space, treatment, and facilities which will serve the social, recreational, and cultural activities of all age groups. Local housing authorities should confer with the local park and playground officials, the boards of education, and the health departments early in their planning of the project. Since it is the function of these agencies to provide adequate service to the public, they are necessarily interested in cooperating in the extension of service in their fields. It is essential also to impress upon all public agencies the fact that although public housing is concerning itself deeply with the social needs of its residents, most of such services should come from the appropriate public sources. In many cities, local park boards or other agencies have provided facilities or mainenance of facilities for USHA-aided projects. The USHA has in its files for reference, information and plans of what is being done in New York and other cities along these lines. In some instances it will be necessary to supplement available public-recreation services. For this purpose the full cooperation of recreation agencies will be invaluable. For instance, if a project is being considered in a neighborhood where there is no playground, the park or recreation department may agree to provide, adjacent to the project, playground facilities adequate to serve the anticipated population; may be found willing to equip and supervise playgrounds within the project; or may agree to supervise a playground where the project has provided the space or equipment. A housing project presents an opportunity for a new pattern of family living, and no adequate precedent to guide the new recreation needs exists. New solutions are necessary. Here are men and women of all ages, youths and girls, children and babies, and their needs, as they vary throughout the day and throughout the year, must be met. The varied recreation interests of each group are equally important, and these interests are so closely interrelated that facilities intended for the use of any one group must be coordinated with opportunities for other members of the com-

munity. The space to be allocated for recreation use in a housing project should be determined, therefore, by a balancing of the social and recreational needs of all ages, limited, however, by careful consideration of the expense of maintaining and supervising such space.

(g) *Esthetic considerations.* Although economy and rational organization must be the primary considerations in the design of the site plan for a project in which low first costs and low operating costs are essential, the skill of the designer and his preference for one type of plan organization over another will influence decisively the character and appearance of the resulting plan. Economy in the layout of access drives and utility services—sewers, water, gas, electricity, etc.—requires that the skeletal frame of any plan of site organization be based on parallel rows of buildings, even if these rows are curved or closed at one or both ends by buildings at right angles. This principle has been carried to diverse extremes in some examples of European planning: some housing projects have used rigidly formal parallel row planning which gives every dwelling uniform orientation and equal treatment with respect to land and services; others have grouped the buildings into an infinite variety of small courts and closures with varying treatment of open space and varying orientation to sun and wind. The esthetic satisfaction obtained may either be that deriving from formality and symmetry, or that deriving from the informal vista and the picturesque or casual grouping. In either case a pleasing result depends more on the designer's skill in handling scale and proportion than on the choice of pattern. It is important that the site plan grow logically out of the requirements of the building types, topography, orientation, and servicing, rather than from preconceived patterns. Once the most economical and useful scheme has been determined, the necessary adjustments can be made for a satisfactory three-dimensional aspect. Thus apartments, through the use of T, X, L, and Y units, may inevitably result in a series of court arrangements. Row-house plans, in which gardens are allotted to each dwelling, may perhaps most simply and economically be developed in groupings of parallel rows. Here, too, a specific site condition—the need for shelter from unpleasant winds, the cutting off of an undesirable view—may give the rows the effect of a court by the use of projecting wings or short buildings placed across the ends of two rows. Similar effects may often be obtained by skillful arrangement of walks and planting. If the designer adapts his plan to the topography, the site plan which is best fitted to the site should result.*† [Par. I]

§ 635.2 *Design and organization of the site.*—(a) *Density.* "Density", unless otherwise qualified, means the number of families per acre.[1] No two plans can be compared for the quality of their livability solely on the basis of their comparative densities. An examination of the plan is always necessary to indicate whether its potentialities as environment have actually been realized at a particular density. In general a low density is desirable because, if there are few families per acre, there is more room for outdoor life, and there tends to be more air, sunlight, and privacy for the dwellings. Further, low density is an insurance against neighborhood obsolescence. Low densities, however, mean additional land cost per unit. Density is influenced by factors other than land cost. In a slum-clearance project near the center of a city where all the equipment for the servicing of a large population exists, there is good reason for utilizing this civic investment by a project which is planned at a relatively high density. On a vacant site in the suburbs it is obvious that a low density is as normal for a public housing project as it would be for a private housing development. In studying sites, an approximate density based on the assumed type of housing unit—whether row house, apartment or other—may be set, or a scale of densities may be set up on the basis of a range of land cost. When the number of dwelling units in the proposed project is determined approximately (possibly varying according to the neighborhood under consideration) this combination of figures—total number of units and density—will give the area of land necessary for the project. With this figure various sites may be reviewed, and for a particular site the calculation may be reversed to give either the density which results from a given number of units, or the number of units which may be built at a given density. Variations in density result from or should correspond to different types of housing structure and these variations can be fixed within rough limits. A layout of single houses cannot generally exceed 12 or 15 to the acre. One-story row houses give densities of 16 or 18 as a maximum, and two-story row houses are commonly planned with a density of from 15 to 20 families per acre. When row houses are supplemented by two-story flats, and one-quarter or one-third of the units are in flats, a two-story project with space for 100 percent automobile parking can have a density of 20 families without undesirable overcrowding. If the auto parking runs under 50 percent and there is a large number of flats, a two-story row-house development can attain a density of about 25 families per acre. Beyond this point it is usually desirable to introduce some three-story buildings.

[1] In general practice an area that excludes public boundary streets and large recreation, unbuildable, or reserved areas, but includes narrow service drives, parking areas, and small recreation spaces, is used in calculating the density.

(b) *Coverage.* "Coverage" is the term commonly used to denote the percentage of a site covered by buildings. Coverage and the number of stories in the buildings are the two factors which determine the density of the population in a housing project. In general, low coverage and low buildings are desirable. The recent trend in this direction is unmistakable. This is especially true of low-rent housing. Occupants of low-rent housing cannot afford to use electric light freely and they must find their recreation close at home. Both of these reasons make low coverage and large open spaces especially desirable. At a particular density the coverage depends upon the size of the units and the number of stories. Coverage and density are thus related variables which directly affect the site plan. In view of this fact, it cannot be too strongly emphasized that the design of the dwellings and of the site plan must proceed at the same time.

(c) *Land cost.* The density of a project should reflect land cost in order to keep to a minimum all expenditures for nondwelling facilities. However, only a general relation between land cost and total development cost can be established. A ratio which may be clearly justified in a metropolitan slum-clearance project may be clearly disproportionate in a project located in the outskirts of a small city. The special conditions bearing upon each case must be considered, since high land costs may sometimes mean low site-development costs, and may often effect a reduction in the total living costs of the tenants by reducing their expenditures for transportation. Land cost is usually calculated on the basis of the money paid out and does not include an allowance for closed streets. In comparisons of site costs the cost per square foot is usually used. All the land made available for the project by purchase (including existing streets which are to be closed) may be included in the total number of square feet by which the total cost of the land is divided to give the average square-foot cost. Where two sites are compared, one of which contains much unbuildable land and the other little or none, it may be necessary to base the calculation upon the net amount of buildable land in each case and not upon the gross area. This is also true in a calculation of the land cost per dwelling unit—the land cost divided by the proposed number of units.

(d) *Site-development cost.* Site-development cost includes the outlay for all outdoor construction such as roads, walks, utilities, grading, planting, fences, and playgrounds. This factor has been found to vary between limits as wide as 5 to 20 percent of the total project cost. A project which is surrounded or intersected by well developed city streets in good condition and utility mains which may be used in the project plan will tend to show a lower site-develop-

ment cost than a project on vacant land. Steep topographic conditions or excessive flatness may increase development costs. And a scheme in which the tenants do not have yards of their own is likely to show higher costs of site development per unit than a scheme in which the land is divided among the tenants. Costs of site development may be minimized by the use of inexpensive types of surfacing for streets, playgrounds, and open areas, and by restricting expenditures for landscape work.

(e) *Buildable area.* No site should be given even tentative consideration unless the amount of buildable area it contains is known. If the site includes steeply sloping land, at least a sketch topography should be available. Data on soil conditions, particularly where there are areas of poor bearing due to natural conditions or to artificial fill, should also be obtained. A site engineer should cooperate with the planner in laying out topographically difficult sites. Runs and depths of sewer cuts constitute an important element of cost. Unbuildable areas of poor bearing soil may often be used for parking or recreation areas, and thus need not cause a serious loss of useful area. Land which is unbuildable because it is so steep that construction cost becomes excessive is ordinarily of little use for other purposes, but all land may be of value to the project in giving more light and air to the houses. At the periphery of a project open area may provide useful protection against undesirable factors in the environment, acting as a miniature "green belt."

(f) *Neighborhood planning.* A small project, the site of which lies within an existing neighborhood, should be planned to form part of such neighborhood. Very large or isolated projects will naturally tend to form neighborhoods of their own and should therefore be planned to provide the basic setting for neighborhood life. This means, in addition to integral provision in the plan of space and facilities for recreation, the additional provision of space for stores, elementary schools, and other facilities whose radius of influence is the neighborhood, although the facilities themselves need not be provided as part of the housing program. There should be careful integration with the city plan, if one exists, or with a general scheme based on a study of population and industrial trends. Close cooperation between the local housing authority and other departments of the local government should be maintained so that any schools, parks, playgrounds, or other facilities planned under the programs of these departments may be related to the housing program.

(g) *Travel routes.* The project must have convenient routes of access to employment, recreation, and shopping centers. Location adjacent to, but not on, a main traffic route is most favored. Intersection of a project site by a traffic route is clearly undesirable, and even minor streets which bisect the site will interfere with the safety of the residents and with the operation of the project. Where streets are closed, the other streets of the neighborhood may be expected to carry more traffic and if these form part of the site boundary, provision should be made by means of ample setbacks for future widening.

(h) *Dwelling types and schedule.* A schedule showing the distribution of dwelling units by size correlated with a schedule of dwelling types must be established before the design of a definite site plan may be begun. Both of these schedules, however, must be subject to slight change while the site plan is being developed in order to permit economical assembly of the units into buildings. The schedule of unit sizes is based upon statistics showing the distribution of families by size in the population group for which the project is being built, and is influenced by the location of the site and the types of dwelling. A "downtown" apartment layout ordinarily favors small units; suburban single, twin, or row houses usually provide for larger families. The cost limitation contained in the United States Housing Act—a maximum room cost fixed at one-quarter of the maximum dwelling unit cost—tends to force the use of units of four rooms, or less, when the per-room construction cost is close to the limit.

"Dwelling types" are the various forms in which the housing units may be assembled; free-standing single and twin one-story or two-story row houses; houses, flats, apartments, duplex or triplex combinations of these. The dwelling type or types selected for a project influence the site plan indirectly through their effect upon density and coverage, and directly through their effect on the status of the tenant families with respect to land use and to types of servicing. Consequently, this is one of the variables which must be adjusted for each tentatively considered site and in each tentative site plan.

(i) *Apartments.* Although apartments are ordinarily to be avoided under the conditions of the USHA program, because they entail somewhat higher maintenance costs than units which may be serviced entirely by the tenants, they may be used where high land cost or other conditions enforce a high density. Apartments should rarely, if ever, be used to provide a small portion of the dwelling units in a predominantly row-house layout since janitor service is more expensive when it operates on a restricted scale. They are economical of land and have a slight advantage in lower construction cost per room. Further, they are particularly appropriate for small units occupied by families with few or no children. There are many ways of planning apartment units and of assembling them into buildings, and new ways are constantly being designed. The "ribbon" type of building, with full cross-ventilation, is probably the most livable, but it is not so economical in first cost or maintenance as T and L apartment groupings, which give a larger number of units to each stairwell. With few exceptions the apartment buildings used in projects planned under the USHA program are three stories in height; four-story walk-up buildings are contemplated in a few projects, and a few elevator apartments, six stories high, have been used. Apartment block plans may be laid out in a variety of row and court patterns. The usual objectives in a court plan are high coverage and variety of architectural effect and vistas. If the site permits some freedom in the placing of the buildings, very careful attention should be given to the orientation, particularly in other than "ribbon" plans. Completely enclosed courts, especially if the buildings are high, should not be used, since this arrangement magnifies noise to an objectionable extent, and impedes air circulation. Careful consideration should be given to the location of the entrances to the buildings; preferably they should be on the court side. The court is usually arranged for community use with sitting-out places and recreation facilities for young children. These areas are more freely used if the people can flow directly into them on a hot summer evening without going far from their apartments. In a site plan for apartment houses special care should be taken to make the land useful: the walks should be wide and the paved areas should be ample. There must be plenty of space for sitting out, with benches and shade, and play lots located to serve directly each group of apartments. The great variety in apartment plan types and frequent occurrence of justifiable breaks in alignment and height of apartment buildings give opportunity for a wide range of esthetic expression. First studies for apartment groups are apt to exhibit highly developed axes, but it is not necessary to use a symmetrical plan in order to achieve unified expression. A group can attain style through careful adaptation to topography, adherence to a preferred orientation, or through the discipline of some principle of unit planning. The most successful plan is one in which the principal objective—livability for the people who will occupy the structures—has been reached.

(2) *Flats.* A flat is a small dwelling unit arranged so that the access hall or stairs are incorporated in the dwelling and maintained by the tenant. In USHA-aided projects, flats are usually two-story buildings. If these are grouped continuously in one building, the ground plan usually provides for a private yard for the first-story units. Provision of yards for the upstairs family is difficult to make unless entrance to the second floor is on the side opposite the first floor entrance. When a considerable number of flats are grouped closely, common space must be provided for laundry drying and special provision

made for servicing, in particular for garbage collection. In a close correlation of flats with row houses, for example, the use of two-story flats at one or both ends of a row of two-story row houses makes it possible to provide the upstairs flats with private yards by using the land at the ends of the building. This also facilitates a simple scheme for servicing the group, since wastes may be collected from either side of the building, the flats being as conveniently accessible as the row houses. Where buildings must sometimes stand close to busy public streets, entrances may be eliminated at the street side of a flat building and all access walks and doors placed on the project side of the building only. This tends to prevent children from playing in the public street, but usually requires treatment of more of the land as project-maintained area.

(3) *Three-story duplexes.* In order to permit the construction of three-story buildings which do not require project maintenance of halls and stairs, a dwelling type has been designed in which the ground floor is occupied by flats and the two floors above are divided vertically into row houses. If a considerable number of flats and three-story duplexes are to be used in a project, it is desirable to group them rather closely, and to base the land plan on common use of land areas by those families which do not have first-floor access to the ground. If these community areas are simply designed and consist mainly of paved surfaces, their upkeep will not be excessive, and they should create little cause for friction between families or between management and tenants. The three-story duplex units are used to increase density without producing excessive coverage; that is, to avoid placing row houses undesirably close together. In one carefully planned housing project about one-third of the buildings (measured in linear feet) are two-story row houses, and the remaining two-thirds are three-story duplex buildings. The project has a density of about 28 families to the acre and the coverage is only 20 percent. If the project had been built in two-story row houses exclusively, the same density would have resulted in a coverage slightly over 25 percent; the distances between the buildings would not have been much over 50 feet front and back—an undesirably close spacing.

(4) *Row houses.* The row house—the standard dwelling type in several European countries and in many American cities—is characterized by great economy in the use of land, moderate construction cost, and low maintenance and operating cost for management and tenants. It gives each family its own home and the opportunity of developing a plot of land for its own use. The economy of a row-house plan obviously derives from the length of the rows, although the per-unit saving diminishes with the length of the building. The economic advantage of a long building results in part from the elimination of end walls, but there are also savings in land, utilities, and walks. Row houses are not adaptable to steep contours except by heavy cutting; ordinarily, buildings should tend to parallel the contours, since longitudinal slopes can only be accommodated by costly breaks of floor level. In the organization of a row-house plan an effort should be made to avoid movements of traffic in any considerable volume parallel to the rows. If the movement of vehicles is restricted to channels lying at the ends of the buildings, the space between the buildings, in close contact with dwelling units, is left free for the safe and comfortable use of the tenants. Row houses may be assembled in many patterns. In general these fall into two types—court plans and parallel row plans. Each of these has advantages. A court layout may attain spaciousness of effect and esthetically satisfying enclosed areas. When the rows are predominantly parallel, the distance from row to row will be somewhat less than the average width of a court, but the longitudinal views will be longer. It is obvious that when a particular orientation to sun or prevailing wind is strongly favored, such orientation must result in predominantly parallel rows. The parallel row plan usually facilitates a simple and practical servicing scheme in which all units are handled uniformly. A court plan can seldom be arranged without traffic routes parallel to some of the buildings. Two-story row houses can accommodate economically families requiring 4½- or 5½-room units. Units of 3½ rooms or less are best handled as two-story flats or as one-story rows.

(i) *Recreation.* The extent of the project's responsibility for providing recreational facilities and the type of facilities required will vary with the following factors:

(1) *Recreational resources within the community.* Existing programs and facilities, and available leadership in the neighborhood surrounding the project should be surveyed and evaluated, in order to avoid duplication and to integrate the project with the facilities, existing or proposed, of the larger community. The planner of the project is then in a position to know the extent to which the project must assume responsibility for supplementing available services.

(2) *The size of the project.* This influences the amount of formal supervision possible, which, in turn, determines the location and equipment of the major play areas.

(3) *Type and arrangement of buildings.* The density of population of the development and the type of dwelling units will influence the kind and extent of recreational facilities required. Apartments, lacking private yards, require a very different type of development from that suitable to row houses or flats.

(4) *The type of community in which the project is located.* In a city it is desirable to provide larger recreation areas than may be necessary in suburbs and small towns, although high land costs usually restrict the amount of land that can be allocated for recreation purposes and thus make a more intensive layout necessary.

(5) *Natural recreational resources within the project site.* A skillful use of existing features on the site (water, hills, trees, etc.) may materially affect the character and influence the cost of the facilities provided. Detailed technical considerations in the design of recreational facilities are presented separately in Part III which follows.

(j) *Relation of buildings to contours.* Plans should always be studied over a topographic map of the site. Even though the land may be so flat that topography is not an essential factor, the grouping of buildings must be studied with respect to surface drainage. If there is any marked variety in elevation, a correlation of the site plan with the topography results in economy of first cost and maintenance, particularly in relation to sewer and drainage lines; and assures convenience in use, for example, by avoiding steep slopes in open spaces or steps in walks. An intelligent use of topographic variations also tends to give a plan individuality. A very steep or broken site may result in excessive development cost unless dwelling spaces or basements can be introduced which utilize the excess walls on the lower side of the buildings. On a moderate slope the rows of buildings should normally run parallel to the contour lines. By a careful study of cross sections it can be determined whether to draw two rows close together along their entrance sides, leaving most of the slope to be taken up in the wider garden areas, or to concentrate all the garden area on one side of each row, usually uphill, with only a walk on the other side giving access to the entrance front of the houses.

(k) *Preservation of trees and buildings.* Existing trees should always be shown in topographic surveys and an effort made to preserve a reasonable number of them. A few old trees add much charm to a group of buildings and the slight variations made in the plan in order to save them may add a pleasing informality to the appearance of the project. If the site is built up, some of the existing buildings may be worth saving. An imaginative handling of the design may make of an old building a very welcome note of variety.

(l) *Economy of utilities layout.* Since a scattered or widespread layout of sewers, water, gas, and electric lines will increase both initial and maintenance costs, close-knit planning of utility systems is mandatory. Lines should ordinarily be located in streets or drives for ready accessibility, but may run else-

where when required by topography or economy of layout.

(m) *Spacing of buildings.* When buildings lie parallel, the following spacing may be regarded as minimum:

	Feet
1-story	50
2-story	55
3-story	60
4-story	65
6-story	75

These distances may be decreased slightly at one side of a building if they are increased at the other. Thus, when generous spacing is justified (where land is cheap and large gardens are desired), two-story row houses may be arranged with a center-to-center spacing of 90 feet, giving alternate open spaces between rows of approximately 50 and 75 feet, or 55 and 70 feet. End-to-end distances may be half these dimensions if end windows are of secondary importance. In general, concentration of buildings in zones with servicing facilities (such as a public street) on one side and an open play area on the other is desirable to reduce site-development cost and maintenance. When topography and the shape of the tract are favorable, this type of building arrangement is economical, and does not increase the density of the project as a whole.

(n) *Orientation.* Orientation to sun and prevailing summer breezes should always be considered. Latitude largely determines the former, while local conditions largely determine the latter. Orientation to sun is most successful when it makes sunshine available in the kitchen in the morning, especially in winter, and provides for some sunshine in the living room in the afternoon. It is obviously impossible to get ideal orientation in all units if the houses face each other in parallel rows, but it is better to have the sunlight available, even if not in the preferred room at the preferred time, than to have no sunlight. The fact that people will live in badly oriented houses or apartments should not encourage the planner to ignore sunlight. Since men are usually away from home during the day they are less likely than women to appreciate the importance of orientation. Most women, even though they fail to arrive at specific opinions concerning preferable exposures, do recognize one room or apartment as being more "cheerful" than another. Although no absolute rule can be made because of the great variety in local conditions, certain guiding ideas are well established. For example, it is generally agreed that in the North row-house or apartment buildings should not be laid out on either a true north-south line or a true east-west line. The north-south line does give sunlight to all the rooms every day, but deprives them of any appreciable amount of it during the middle of the day, a loss which is important during the winter months. Further, this orientation exposes the west wall of the building to excessive heat during the summer. An east-west alignment does not permit the ground just north of the building to get sunshine in winter; it is generally agreed, in the North, that the north side of a building which runs east-west is a disagreeable place in winter and early spring. An angle of approximately thirty degrees off the east-west line is required to enable the early spring sun to melt the snow and dry the ground on the northerly side of a house in the northern part of the country; where the winters are shorter and there is less snow this approximate angle diminishes, until in the extreme South an east-west alignment is usually preferred. Under some conditions insolation, the sun's heat, becomes an important factor, both positively in autumn, winter, and spring, and negatively in summer. This factor, considered by itself, favors a southerly aspect in winter and a southwest aspect in summer—the building lying on a line running from northwest to southeast. Local atmospheric conditions may also bear on desirability of orientation, as in the vicinity of New York, where the frequency of morning mists makes a southwesterly aspect the sunniest. Orientation, then, is a matter of compromise between conflicting factors. Where sunlight on the ground around a building is important, and where the psychological value of morning sunlight is given full weight, a location with the length of the building lying northeast-southwest, at an angle between 30 to 60 degrees off north, is probably the best for the Northern States. The axis swings toward east-west as one goes south. A secondary favorable zone (giving early afternoon sun in winter and good protection from afternoon sun in summer) lies in the northwest-southeast quadrants, but the line of the buildings must not swing more than 15 or 20 degrees from the east-west line.

(o) *Servicing.* Access to the various units of a project must be provided for deliveries, particularly of fuel, and for garbage or ash collection. These will influence the path and interior road system and to some extent the type of pattern of the site plan. In turn, the choice of dwelling type, heating system, and other services will determine the paths and roads. Often a choice must be made, in row-house projects, between facing the living room or the kitchen on the street or yard, and between facing one or the other on a more sunny side. Such a choice will generally be determined by whether it is preferable to receive visitors through the kitchen, to remove garbage through the living room, or to provide a dual path system. In apartment-house projects, access to perambulator and incinerator rooms is important. The location of repair shop and storage rooms (both project and tenant) must be considered in relation to roads and paths. The extent and type of vehicular access required will therefore vary with the type of heating system, method of garbage collection, and with the types of dwellings. For utmost simplicity in construction and operation, access to two rows of houses should ideally be concentrated along a single channel. This means all visitors, deliverymen, the postman, and even the garbage collector, will come to one entrance to the house, usually by a drive or walk serving a pair of rows. The opposite or garden side of the house may then open upon a strictly private yard. This scheme concentrates paving where it is most needed, and gives complete privacy to the opposite side of the house and its adjoining open space. This ideal, however, can seldom be realized because the design of the dwelling plan, or the requirements of orientation, utilities, and street design, may necessitate other solutions which, when all elements are considered, are both cheaper and more livable. In all instances, whatever form the plan takes, the site planner must find a better arrangement than the old-fashioned layout for row houses with a street in front and an alley behind.

(p) *Type of heating system.* The choice of heating system—whether central plant, group plant, or individual—will directly affect the distances between buildings, and the plan of vehicular access. Where each house is heated separately by an individual plant using either coal or wood, the service drive must be located within 15 feet of the dwelling, the maximum distance for delivery of coal by chute, and for removal of ashes. Where oil or gas-fired individual heaters are used, no such limiting condition is placed on the location of dwelling units. Where group central plants are used, the building containing the plant should be near a paved road. This may perhaps be an apartment building with a basement, in which laundries and drying rooms may be placed adjacent to the boiler room. Central heating plants require relatively close organization of the site plan for economical distribution, but do not require vehicular access to any building other than that containing the plant. This should be located at a low point near the edge of the project, preferably at a point where the wind will blow smoke away from the dwellings.

(q) *System of garbage collection and removal.* Garbage and trash removal methods are a limiting element in the design, and should be defined and incorporated in the site plan. This does not mean that garbage and trash disposal arrangements must always be the most economical or most convenient for the tenant in *every* dwelling unit without regard to other considerations, but does mean that a careful balance must be established between this and other requirements in the site plan. Preliminary to development of the site plan, the local authority should consult with the local agency having jurisdiction over the removal of garbage and trash in order to determine what service may be made available. Existing operating conditions should be

determined, i. e., frequency of garbage and trash collection during the various seasons of the year; acceptance of incinerated material; the distance from the curb that employees of the collection agency will go to pick up cans, and the street layout required to permit collections; and local requirements for the separation of types of refuse. Where collection and disposal are not established municipal services, the fees for service and the basis upon which they are set should be determined, as well as any other special conditions which must be considered in order to design for continuously satisfactory service. Garbage may be collected from the yards or apartment doors in the usual way; it may be taken by the tenants to large pails at collection stations on vehicular ways; or it may be carried to group incinerators. Where incinerators are used in apartment stair halls, it is desirable to provide access for wheeled hand trucks directly to the incinerators. Wherever possible, this access should be by ramps instead of steps. Where collection station or group incinerator systems are used, local custom and climatic conditions should determine the maximum distance which tenants are expected to walk in order to dispose of garbage. The stations should be located conveniently for collection along a service drive and should be large enough to accommodate one garbage and one trash can for every two families serviced. Where sunken containers, or individual cans kept near the service doors, are used (generally in row-house plans), service drives should be provided between rows of buildings for economical operation. In some instances the "front" or street side of the dwelling may be used for this purpose, if the collection agency will collect directly from these points, thereby eliminating project labor. In general, provisions for this essential service should be considered practically, without too much regard for conventional proprieties. Tenants may be expected to carry garbage out by way of the living room and to keep a pail in the "front" yard if economy in drives, walks, or operation will result.

(r) *Streets and parking spaces.* For purposes of economy and utility, the design of streets should be closely related to the particular function each street will perform. Many residential streets and their utility layouts are wastefully oversized because they are designed to meet the supposed future requirements of business or industry. In a large project where the land is in single ownership and may be expected to remain in residential use for many years, the conditions surrounding a street within the project may be predetermined and fixed. New streets within a project should be planned for dedication to the municipality in order to relieve the project of their maintenance and to provide public space for utility installation. They should be planned economically, but must be adequate in width to serve the anticipated traffic, to permit easy circulation and safe driving, and, in many instances, to afford parking space on one or both sides. Existing streets should be retained if present and future economy is served thereby. However, existing streets are often unnecessarily wide or long for the needs of the project and the value of the area gained by their closing may exceed the value to the project of the existing improvements. Direct vehicular access to the entrance of each building is unnecessary, but driveways should be a reasonable distance from all buildings. Only in exceptional cases should 200 feet be exceeded. Streets and driveways should be arranged to permit easy access to all fire hydrants by fire-fighting equipment. This should be checked with the requirements of the local fire department. Some service roads may be planned for use only at certain times, and the entrance barred by removable posts or chains. Preferred widths (in curb-to-curb dimensions) are:

One-way restricted service, 9 or 10 feet.

Two-way lane, no parking, 16 or 18 feet.

Two-way lane, parallel parking on one side, 18 or 20 feet.

Two-way lane, parallel parking on both sides, 26 feet.

Two-way road, parallel parking on both sides, 34 or 36 feet.

Two-way road, diagonal parking on one side, 36 feet.

Two-way road, diagonal parking on both sides, 45 feet.

Two-way road, perpendicular parking on one side, 36 to 40 feet.

Two-way road, perpendicular parking on both sides, 54 to 60 feet.

Provision of parking area for the cars of tenants must be made. The ratio of car ownership, as a basis for planning, must be judged independently in each case, and may vary from nearly zero in a New York City apartment project to nearly a hundred percent in Detroit. Where the ratio of car ownership is apt to increase, space should be reserved for possible future expansion of car ownership. It does not seem feasible to provide garages, or even open sheds, under the present program. Since cars owned by low-income tenants are likely to stand unused for considerable periods, especially in winter, curb-parking along perimeter streets and project drives may prove unsatisfactory. Moreover, all-night parking is widely recognized as a nuisance; most cities have ordinances limiting such parking or prohibiting it, and opposition to this use of streets is likely to increase with time. The most acceptable alternative, therefore, is off-street parking in parking lots or courts. All projects should be planned initially with satisfactory provision for parking tenant-owned cars. The preferable location for off-street parking areas is around the boundaries of the project, where the parking lots fall between the housing units, and for example, a noisy thoroughfare. In a small project the best solution may be a single parking lot placed near the administrative offices or the heating plant, with only one entrance to the lot, so that some degree of supervision may be exercised. Where parking lots or drives are close to play spaces, substantial fencing must be used which will afford the greatest measure of protection to children at play.

(s) *Laundry drying.* In row houses or flats with private yards, individual provision for clothes-drying can be made. Where it is not possible to give private yards to all the tenants, common provision for outdoor drying of laundry must be made. Group drying yards should contain a minimum of 60 feet, preferably 70 to 75 feet of line, and may be arranged with two lines placed 18 inches apart and 2 to 3 feet between each pair. Such yards may be used as play spaces in the evenings.*† [Par. II]

§ 635.3 *The design and treatment of open areas for recreation purposes—* (a) *Facilities for small children.* Children of preschool age are best provided for in groups separate from older children; since they are dependent on others for care, areas for their use may effectively be combined with sitting areas for adults. In determining the distribution and size of play lots for young children, various arrangements are feasible. A number of relatively small, decentralized areas located conveniently for supervision by parents may be provided, or a few larger areas, or, in some projects, one centralized area with facilities for water play. The most desirable plan includes a combination of these, i. e., a number of small play spaces, each serving a group of buildings in the immediate vicinity, and one larger area designed for supervised play for many of the children of the project. This central area may sometimes be combined with the playground for older children and generally includes a wading pool or a shower basin. The play space should always be planned so that the child will not have to cross traffic drives and parking areas to reach it, and should preferably not be adjacent to parking areas. Where play lots are located near drives or parking areas, they must be fenced, as children have little thought for safety while playing and will run into traffic to chase a ball. In spotting such play lots in the site plan, the planner may check the adequacy of the space provided against the number of children who are expected to use it. For this purpose, data relating to family composition in existing projects are more useful than United States census figures, as low-rent housing projects have

a consistently higher percentage of children than the population as a whole. Existing Federal projects average 0.77 children under 6 years of age per average 4-room unit; USHA-aided projects may be expected to show an equal or greater child population. In checking the adequacy of a play space immediately related to a group of dwellings, the figure of 40 to 50 square feet of space per child may be used. This figure should not, however, be used as a basis for determining the total amount of space required for play lots in a project. To illustrate the application of these data, let us assume that the site planner must provide at a certain place in his plan space for the preschool age children of 50 families. These families live in flats and row houses, and will have direct and convenient access to the spot. There will presumably be from 35 to 40 children under 6 years of age in the group. Of these, about 10 will be in the baby-carriage stage, so that probably no more than 30 will actually play in the space at any particular time. An open area of 1,200 square feet, plus room for 8 or 10 baby carriages and 4 or 5 benches, will provide adequate space for the children of the immediate vicinity. These areas are designed for operation without supervision except that given by the mothers or older children. They commonly provide a hard-surfaced area; a sand box and a soft or natural surfaced area; and a paved area with benches shaded by trees. The hard-surfaced area is almost essential for baby buggies and for play with wheel-toys and, in addition, provides a fast-drying surface on which a baby pen may be set directly after a rain. Natural soil is ideal for digging, jumping, and running for the 3- or 4-year-old child. It requires some maintenance (raking and filling-in), and some precaution must be taken to keep it from spreading into the surrounding area, such as edging it with brick or stout hedge. Favored orientation for these spaces is that which provides sunlight in spring and fall, preferably in the afternoon, and shade in summer.

(b) *Water play.* Facilities for water play must be designed with initial and maintenance costs always in mind. If the construction of even a small wading pool is an excessive burden where very low rents must be reached, the use of spray showers on a bituminous area properly sloped for drainage will provide a reasonably satisfactory substitute. Wading pools may be constructed in various sizes and shapes, related to the location, the population of the project, and the plans for other use of the space during seasons too cool for wading. Oval or circular pools make a pleasing contrast with the predominantly rectangular forms of the project and are, moreover, easy to keep clean. Where rectangular-shaped pools are used, the bottom should slope up to all four edges, in order to eliminate corners, which are difficult to clean. An area surrounding the pool should be paved with a hard surface, either bituminous or random paving, never with clay, gravel, or grass. This paved area may be as great as 20 feet. Pools should preferably be shallow; a 10-inch depth at the deepest point is recommended as a maximum. The slope from the outer shallow edge to the center deep point should be very gradual for reasons of safety. A gradual slope, moreover, makes possible the use of the pool during cool seasons for volley ball, shuffleboard, dancing, badminton, handball, ring games, paddle tennis, roller skating, etc. (Occasionally pools may be used in winter for ice skating. In such cases, pools should not be filled to the outer edge to prevent damage by pressure of ice on the sides of the pool.) Relatively large pools are sometimes made 40 by 60 feet so as to be used in spring and fall as basketball courts. For proper safety and sanitation in operation, pools should be equipped with an overflow gutter, should have a constant, slight flow of water, and should use some form of chlorination. Overhead showers should be an integral part of the pool.

(c) *The common central area.* Centralized areas—often placed as points accessible to several courts or groups of buildings—may also be developed in a variety of ways. The objective is to supplement the small play lots with facilities which can be provided economically only on a more centralized basis and which may be useful for a wider range. The area includes a wading pool, encircled by a hard-surfaced area, and benches, shaded by surrounding trees. Although this area is primarily for young children, it may also be adapted to recreation use by older age groups. Play apparatus may be provided, if desirable, in the surfaced area. The design, equipment, and surfacing most suitable to the use of this area should be planned in cooperation with the agency which assumes responsibility for supervision. With no equipment necessary, the area may be used by little children when they cannot go to a nearby playground and by young people and adults for organized or informal play. The entire community may use it for dances, concerts, and other community gatherings. The area may be marked off for various games which require a firm, hard surface. This marking may be designed to afford multiple uses. Little additional equipment is required and this may be portable. Thus, a relatively small space may be developed at small cost to provide recreation for some group of the population at every hour of the day, and during all seasons. Drinking fountains should be provided in central areas for preschool age children; toilets should be provided near any play area from which the children cannot readily reach home.

(d) *Playgrounds for older children.* Where playgrounds for school-age children are included in the project, the following recommendations are intended as a guide to their design:

(1) *Size and distribution.* The total area of the playground must be determined by the space requirements of the various activities and these should generally encourage the most intensive use of the space. This area must be related to the number of children who are expected to use it. Experience indicates that nearly all of the children of elementary school age in a community use the playground each day. Existing public-housing projects average 0.75 children of school age per average 4-room unit. This figure may be equalled or exceeded in USHA-aided projects. In addition to the child population of the project, the possible use of the playground by children of the community surrounding the project must be taken into account when estimating the anticipated use of a project playground. Three and a half acres is generally considered to be the minimum area necessary to provide a desirable range of play opportunities for a child population of 100 to 500. In housing projects where space is very limited, some opportunity for vigorous play may be afforded in an area of 70 by 150 feet. This allows for apparatus, free play, and organized games for 100 children actually playing. A larger area should be allowed if more land is available, but this minimum amount of space should always be provided. In general, central location for the playground is convenient for the children, but is not necessary. The playground is best planned away from the dwellings because of the noise factor, but should be so placed that children will not have to cross traffic streets to reach it. Where a community building is included in the project it is logical to connect it directly with the playground so that the use and supervision of indoor and outdoor facilities may be related. If indoor basement playrooms are provided, it is desirable to locate the playground adjacent to one of these.

(2) *General design considerations.* In all playgrounds, it is wise to plan for games engaging a large number of participants as well as to plan for multiple use of areas, e. g., wading pools used as basketball courts, shuffleboard surfaces used for roller skating and dancing, and surfaces designed for organized games the year round and ice skating in winter. The areas should be arranged for convenience of supervision; to provide for as many different types of play as possible; and to facilitate age grouping of the children. For example, when a playground includes areas for various age groupings, the area for preschool age children should always be situated close to the point of supervision and should be separated from the other areas by benches, planting, or a fence. The space for the next older age group may have an open area, an area with simple equipment such as tables for crafts (if some form of supervision can be arranged), and a sprinkling or wading pool. The

space for the next older age group may have an area for paddle tennis, volley ball, shuffleboard, and horshoe pitching; space for such games as handball or basketball for the oldest group may be arranged at the end of the playground farthest removed from supervision. Some form of shelter is desirable and should preferably be provided close to the game areas which require supervision. The shelter may contain space for quiet play in hot or wet weather, toilets, drinking fountain, and storage space for supplies. In the playground, as in other spaces, both sun and shade are necessary. Shade trees may be limited to the periphery of the play areas and to the space reserved for quiet games and apparatus. Trees may be used to advantage to divide one part of the playground from another but they should be arranged carefully in order not to interfere with the placing of the apparatus or with the play activities.

(e) *Playground surfaces.* The ideal playground may be considered as having three distinctive areas from the standpoint of surface requirements: one is the area for field sports, which requires a surface firm enough to give a secure footing, yet resilient enough to minimize injuries when the players fall; second is the area for court games—such as handball, basketball, paddle tennis, volleyball, and badminton—which needs a hard surface on which the bounce of the ball will be true; third is the play area upon which apparatus is installed, and on which various types of surfacing may be used. Although it is impossible to obtain all the desirable qualities in the same playground surface, any surface must, in general, have the following qualities in order to meet the requirements of function, durability, and economy:

(1) *Low cost.* Cost of construction and of maintenance must be reasonable.

(2) *Utility.* The surface should be suitable for a variety of uses under varying weather conditions. Surfaces which cannot be used during several months of the year because of moisture or frost should be avoided.

(3) *Resilience.* Resilience is usually desirable to reduce shock to the players. However, this quality must be attained without sacrifice of durability, since intensively used surfaces must withstand considerable wear.

(4) *Smoothness.* Play areas should be free from irregularities and rough spots. This is especially true for games involving the bounce of a ball and also applies to most court games. Since falls while playing are frequent, the surface should have a texture which will reduce cuts and bruises to a minimum.

(5) *Quick drainage.* Water must drain off quickly without causing erosion of the surface. Subdrainage may be necessary.

(6) *Freedom from dust.* If the area is unsurfaced the soil should not be so porous that it is neither firm nor free from dust. Where it is impossible to prevent an excess of dust it may be advisable to use dust layers. Surfaces should not injure players' clothing.

(7) *Appearance.* Surfaces should present a neat aspect. A glaring surface should be avoided in order to minimize eye strain. The experience and advice of local boards of education and recreation agencies will be of great help in selecting the suitable surface for a particular situation. The following general conclusions are based on experience with different types of surfacing in a number of existing low-cost housing projects.

(i) *Turf.* Turf is wholly impractical for use in play areas in most parts of the country, and is, moreover, unsuitable for year round play. Its use is not recommended.

(ii) *Concrete.* Concrete, because of its lack of resiliency, is hard on the feet and is abrasive. Large concrete areas are not pleasing in appearance. Although it is easy and inexpensive to maintain, it is relatively expensive initially, and its use is not generally recommended except in limited areas.

(iii) *Gravel.* Gravel is a desirable surface in areas intended for quiet recreation containing benches and shade trees. It is inexpensive to maintain and very attractive in appearance. Trees planted in graveled areas can grow freely because their roots are allowed to breathe. Gravel has been used successfully in many housing projects and parks in other countries. Children in this country are not accustomed to its use, and therefore have a tendency to throw it around. However, it may be used satisfactorily in small areas in which large trees are to be planted. In order to prevent overflow into surrounding surfaces, hardy shrubs or other material should be used to bound such areas.

(iv) *Sand clay.* Mixtures of clay with sand or gravel have not proven altogether satisfactory, owing to the difficulty of obtaining the proper proportioning of materials and uniformity of mix. In general, satisfactory performance at low cost is obtained with this material only when a suitable natural mixture is available locally. Otherwise, costs of laboratory control and mechanical mixing will be prohibitively high. Surfaces of this type cannot generally be used when frozen ground is thawing.

(v) *Bituminous surfacing.* The use of bituminous materials for surfacing playground areas has extended rapidly during the last few years, especially on small intensively used areas, for the following reasons: they can be played upon throughout the year; they can be used immediately after rain; maintenance expense is low; cracks or depressions may be easily patched or repaired; they can be played on with any kind of shoes; they afford an even surface; they permit faster and more accurate play than other surfaces; permanent lines marking boundaries of game areas may be painted on them. Bituminous surfaces have proven most satisfactory for play areas in housing projects, and have been increasingly used by local parks and playground departments. Formulae and methods of laying vary widely from city to city with type of labor and supervision available, type of materials available locally, and type and proximity of mixing plants. Many cities use patented mixes and products which are available locally. Several have experimented to develop a bituminous surface which is both resilient and durable, but no material has yet been found which has these characteristics and which can be produced at a reasonable cost without highly skilled labor or supervision. The basic requirement of bituminous surfacing for play areas is a dense, fine-grained, and smooth topping which is impervious and will not tend to scuff or ravel, and which will minimize injury from falls. A firm base is needed for all bituminous surfaces. Thorough compaction of base and topping is essential. The material should not be used on very small or irregularly shaped areas on which effective power rolling is impracticable. To increase resiliency, sawdust topping and cork-asphalt mixtures have been used experimentally. It is believed that cork-asphalt mixtures offer the more practical possibilities for application in housing projects. City authorities should be consulted in formulating a specification for bituminous surfacing. It is important to specify work which is adapted to local materials, and is similar to surfaces which contractors in the locality are accustomed to laying. Rigid inspection is essential.

(vi) *Abandoned street pavements.* The use for playground purposes of the existing pavements on vacated streets sometimes appears to offer a means of effecting a saving in project cost. However, if the pavements require resurfacing to eliminate gutters and crown, or if drainage arrangements must be altered materially, the saving becomes almost negligible. Only in exceptional cases is this an advantageous method of providing surfaced recreation area.

(vii) *Surfacing under apparatus.* Special provision for surfacing is required under and around certain types of apparatus in order to avoid and reduce injury. It is advisable to provide a soft landing pit at the foot of slides. The materials best suited for such use are tanbark, sawdust, shavings, and sand, alone or in combination, or light loam spaded and raked frequently.

(f) *Surfacing play lots.* A combination of surfaces is desirable for small play areas where several distinct types of play are carried on and the entire area is subjected to intensive use. The natural earth surface warrants consideration for some uses. While objectionable in obvious respects, this surface possesses the important advantages of low cost and of comfort to the users. It may consist of the same material which is placed in the subgrade, compacted and well graded for drainage. Wherever feasible, a bituminous or other hard-surfaced area should

be provided, in conjunction with the "soft" areas, for play with wheel-toys and use after rain. A concrete walk surrounding the play area may be useful for wheel-toy activity and should be wide enough to permit two wheel-toys to pass.

(g) *Surfacing sitting-out areas.* For minor walks (used only by one or two families) and for sitting-out areas, the variety of materials which may be used is governed only by the ingenuity of the designer and local cost factors. Often, as a result of specific local conditions, a particular material, such as brick, some form of random paving, or granite block, may be economically feasible. Brick paving may be used for the sitting areas where costs will permit. Often brick salvaged from demolition on the site may be used for this purpose. The brick should be laid on a light concrete base. Various kinds of stone, flags, or concrete block, either precast or cast on the site, may be used. As an illustration of economical use of materials at hand, in a large eastern city, the parks department and some of the housing projects have used granite block paving salvaged from old streets which were torn up. When this supply was exhausted, the parks department experimented with various types of precast concrete tile and developed an inexpensive tile which permits grass to grow up at random through the joints. Where precast tiles are used, they should be 2 inches thick and bedded on a cushion of sand approximately 4 inches thick. Tile may be of any desired shape, and may be conveniently cast at the site. It will often be found that flagstones are more economical than precast concrete tile, depending on proximity of the site to the sources of supply. For stepping stones cast in place an economical practice is to excavate to a depth of 6 to 7 inches and to the width and length of the desired stepping stone. In this excavation approximately 4 inches of sand may be spread for cushion, and sufficient concrete poured upon this to bring the wearing surface to within one-half inch of the finished grade of the surrounding plot. This will allow the surrounding soil to be compacted around the edges of the stone, and increase the solidity of the bed.*† [Par. III]

§ 635.4 *Planting and plant materials.*—(a) *Trees.* In most parts of the country trees should be few in number, since light and air are more valuable than shade in closely built housing groups. A few thriving trees make a better appearance than many which are badly conditioned. In some cases, however, a close row or clump of trees will be more effective and easier to protect and maintain than free-standing specimens. Most of the trees can be placed, either formally or informally, as part of the architectural composition, framing favored views, breaking unfavorable ones, dividing a long space into smaller ones, or producing an effect of closure at one side of a court.

(b) *Vines.* Most of the current housing construction is in brick and the buildings are simple in mass and detail. In no more pleasant way can the charm of green foliage be brought into a group of such buildings than by the free use of vines. Vines soften the line between ground and building, give variety to long walls, reduce glare, make buildings seem farther away, and help to separate the various planes that are thrown together in vistas through the project. An attractive effect is often produced by planting close-covering vines against the end walls of the buildings, with some vines also on the rear wall; this tends to concentrate attention on the facade of the building. Flowering vines, particularly the herbaceous kinds, give quick results in foliage and color and use little space. If fences are used, a liberal planting of vines near them is desirable.

(c) *Shrubs.* Planting plans for low-rent housing projects will usually include a smaller proportion of shrubs than is customary in private work. Shrubs are expensive to plant and to maintain during the first years. Later on they may need thinning or replacement. Shrubs should be planted, where possible, in places that are well protected from traffic: close to buildings, or fences, or on steep slopes. To mark lines or points, as to show the outline of a yard, single or widely placed shrubs can be used, but free-standing specimens ought rarely to be planted. When conditions are favorable, the use of local indigenous varieties is recommended. Shrubs should be planted as hedges very sparingly when this use will require careful trimming and maintenance by project labor. Species that make a satisfactory untrimmed hedge, or which can be kept in shape by an annual pruning, ought usually to be preferred. Many people enjoy caring for hedges, which are very often seen even in the poorest parts of many cities. Where local custom is favorable, hedges can be used, in part at least, to mark the boundaries of tenant yards.

(d) *Grass and ground covers.* In all low-rent housing projects, and particularly in high-density slum-clearance projects in northern cities, the land use must be so complete and intensive that lawns are both impractical and uneconomical. The larger open areas intended for community use must therefore be covered with some kind of pavement; small areas used to divide or delimit these larger areas, and land not suitably located for other use, should be planted with shrubs or with one of the spreading shrubby or herbaceous ground covers, preferably an evergreen species. Areas particularly well suited for ground-cover planting are steep slopes and those spaces, adjacent to buildings, which must be reserved from use in order to give living quarters privacy and quiet. A curb or fence or a row of shrubs will protect these beds from trespassers; the stronger covers and the thorny vines that are commonly used on slopes will need no protection.

(e) *Flowers.* The plant lists for the initial planting of a housing project may include few "flowers" in the common sense of the word, but after the project is well established it should be rich in annual and herbaceous plants, and the landscape plans must provide places for these. Flowers must therefore be considered for use in both project-maintained and tenant maintained space. It is feasible in most large projects to have one, two, or more flower beds. These should be favorably located, if possible, with regard to sun and atmospheric conditions, and should be visible to the maximum number of people. The size of beds and their number should be small. One small bed, constantly in bloom, is better than acres of so-called gardens full of rank weeds, bare spots, and cast-off cigarette packages. The bed itself is often best surrounded by a coping of concrete or of up-ended bricks, which serves to mark it off from the rest of the open area. The development of flower beds in tenant yards will depend, in large measure, on the policy and plan of the management for advising and assisting tenants in the care and beautification of the yards. This is a consideration for management, not for the planner. However, the core of good tenant-management relations may be just such joint effort toward a common objective. Similarly, flower beds in the project-maintained space may be cared for by groups of tenants. The beauty of a flower bed, or of a group of old trees, which may result from the work and interest of a group of tenants, may symbolize achievement of the basic purpose of the housing program. Community responsibility, pride in the housing project, and an appreciation of good municipal housekeeping can be developed in no better way.*† [Par. IV]

NATHAN STRAUS,
Administrator.

OCTOBER 17, 1939.

[F. R. Doc. 39-3908; Filed, October 23, 1939; 10:33 a. m.]

TITLE 43—PUBLIC LANDS

GENERAL LAND OFFICE

STOCK DRIVEWAY WITHDRAWAL NO. 47, NEW MEXICO NO. 5, REDUCED

Correction

The land description for Section 28 under "T. 21 S., R. 9 E.," in F. R. Doc. 39-3854 (filed, October 19, 1939, at 9:37 a. m.), appearing on Page 4307 of the FEDERAL REGISTER for Friday, October 20, 1939, should read "NE¼, NW¼SE¼;" instead of "NE¼, NW¼, SE¼;".

BUREAU OF RECLAMATION

RESERVATION FOR DITCHRIDER'S QUARTERS, GRAND VALLEY RECLAMATION PROJECT, COLORADO

OCTOBER 6, 1939.

The SECRETARY OF THE INTERIOR.

SIR: It is recommended that the following described land, now withdrawn under the second and first forms of withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat. 388) by Departmental orders of July 2, and August 26, 1902 and July 27, 1908, be designated as a Government Reserve and set aside for use as a Ditchrider's quarters.

GRAND VALLEY PROJECT, COLORADO

Ute Meridian

T. 2 N., R. 2 W., Sec. 22, S½SW¼SW¼NW¼

Respectfully,

JOHN C. PAGE,
Commissioner.

The land described is hereby designated and set aside as recommended and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

JOHN W. FINCH,
Acting Assistant Secretary.

OCTOBER 13, 1939.

[F. R. Doc. 39-3897; Filed, October 21, 1939; 9:22 a. m.]

TITLE 50—WILDLIFE

BUREAU OF BIOLOGICAL SURVEY

PART 21—INDIVIDUAL NATIONAL WILDLIFE REFUGES

PACIFIC REGION

§ 21.913 *Order permitting and regulating hunting of certain game birds within the Tule Lake Wildlife Refuge, California.* Pursuant to section 84 of the act of March 4, 1909, 35 Stat. 1088, as amended by the act of April 15, 1924, 43 Stat. 98, section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), and to the President's Reorganization Plan No. II, promulgated May 9, 1939, in accordance with the Reorganization Act of 1939 (Public No. 19, 76th Congress), and in extension of regulation 9 of the regulations of November 23, 1937,[1] for the administration of national wildlife refuges under the jurisdiction of the Bureau of Biological Survey, it is hereby ordered, that until further notice migratory waterfowl (except those species for which no open season is prescribed by the Migratory Bird Treaty Act Regulations), coots, and Chinese pheasants may be taken within the areas of Tule Lake Wildlife Refuge, California, hereinafter described and hereby designated "shooting areas," when, in manner, by means, and to the extent not prohibited either by Federal or State law or regulation, and under the following special provisions, conditions, restrictions, and requirements:

§ 21.913 (a) *Shooting areas.* Those areas within the refuge described as follows:

Area No. 1. Beginning at the southwest corner of sec. 31 T. 47 N., R. 4 E., Mount Diablo Meridian.

Thence between Tps. 47 N., Rs. 3 and 4 E.,

Northerly with west boundary of secs. 31, 30, 19, 18, and 7, T. 47 N., R. 4 E., to the northwest corner of lot 4, sec. 7, T. 47 N., R. 4 E.;

Thence in T. 47 N., R. 4 E.,

Easterly to the northeast corner of said lot 4, sec. 7;

Southerly with the east boundaries of lot 4, sec. 7, and lots 1 and 2, sec. 18, to the southeast corner of lot 2, sec. 18;

Easterly to the one-quarter corner between secs. 17 and 18;

Northerly to the northwest corner of sec. 17;

Westerly to a point 200 feet west of the outer toe of the Tule Lake Dike;

Southerly in secs. 17, 20, 29, and 32 with a line parallel with, and 200 feet distant from, the outer toe of the said dike, to a point 200 feet south of the outer toe;

Easterly in secs. 32, 33, and 34 with a line parallel with, and 200 feet distant from, the outer toe of the said dike, to a point 200 feet west of the outer toe;

Southerly in sec. 34 with a line parallel with, and 200 feet distant from, the outer toe of the said dike, to the line between T. 46 N., R. 4 E., and T. 47 N., R. 4 E.;

Thence in T. 46 N., R. 4 E.,

Southerly in sec. 3 with a line parallel with, and 200 feet distant from the outer toe of the Tule Lake Dike, to a point 200 feet south of the outer toe;

Easterly to the line between secs. 2 and 3;

Southerly between secs. 2 and 3 to the southwest corner of sec. 3;

Easterly between secs. 2 and 10 to the northeast corner of sec. 10;

Southerly between secs. 10 and 11, and 14 and 15, to the north boundary of the Lava Beds National Monument;

Westerly with the north boundary of the Lava Beds National Monument, in secs. 15, 16, 15, 10, 9, 16, 21, 20, 17, and 18, to the one-quarter corner common to sec. 13, T. 46 N., R. 3 E., and sec. 18, T. 46 N., R. 4 E.;

Thence between Tps. 46 N., Rs. 3 and 4 E.,

Northerly with the west boundary of secs. 18, 7 and 6 to the northeast corner of T. 46 N., R. 3 E.;

Thence with the south boundary of T. 47 N., R. 3 E.,

Easterly to the southeast corner of said township;

Thence with the east boundary of T. 47 N., R. 3 E.,

Northerly to the place of beginning.

Area No. 2. Beginning at the corner common to secs. 22, 23, 26, and 27, T. 47 N., R. 4 E.,

Thence,

Easterly between secs. 23 and 26, and 24 and 25, to a point 10 feet east of the outer toe of the Tule Lake dike;

Northerly in sec. 24 with a line parallel with, and 10 feet east of, said dike, to the center line of sec. 24;

Easterly in sec. 24 to the one-quarter corner common to sec. 24, T. 47 N., R. 4 E., and sec. 19, T. 47 N., R. 5 E.;

Thence in T. 47 N., R. 5 E.,

Easterly in secs. 19 and 20 to a point 200 feet southwest of the outer toe of the Tule Lake Dike;

Southeasterly in sec. 20, with a line parallel with, and 200 feet distant from, the toe of the said dike, to the west right-of-way boundary of the Great Northern Railroad;

Southerly in secs. 20, 29, 32, and 33 with the west right-of-way boundary of the Great Northern Railroad to the intersection with the line between T. 47 N., R. 5 E., and T. 46 N., R. 5 E.;

Thence in T. 46 N., R. 5 E.,

Southeasterly in sec. 4, with the west right-of-way boundary of the Great Northern Railroad to the east-west center line;

Westerly in sec. 4 to a point 10 feet north of the toe of the dike;

Westerly in secs. 5 and 6, with a line parallel with, and 10 feet distant from, said dike, to the line between T. 46 N., R. 5 E., and T. 46 N., R. 4 E.;

Thence in T. 46 N., R. 4 E.,

Westerly in secs. 1 and 2 with a line parallel with, and 10 feet distant from, said dike, to a point 10 feet east of the toe of the dike;

Northerly in sec. 2 with a line parallel with, and 10 feet distant from, said dike, to the line between T. 46 N., R. 4 E., and T. 47 N., R. 4 E.;

Thence in T. 47 N., R. 4 E.,

Northerly in sec. 35 with a line parallel with, and 10 feet distant from, said dike, to a point in the line between secs. 34 and 35;

Northerly between secs. 34 and 35, and 26 and 27, to the place of beginning.

§ 21.913 (b) *Entry upon refuge—firearms.* No person may enter the refuge for the purpose of hunting in accordance with this order except under permit from the officer in charge thereof, and the having or carrying of firearms on the refuge without permit from the officer in charge, except on highways, thoroughfares, and shooting areas, or routes of travel to and from such areas designated by such officer, or when appropriate to the object for which any

[1] 2 F.R. 2538 (2952 DI).

special permit may have been issued, will not be permitted. Persons entering or crossing the refuge for the purpose of hunting, as permitted by this order, shall use such established routes of travel and shall not otherwise enter upon the refuge. The carrying or being in possession of rifled firearms or the use of single ball or slug load shotgun shells on the refuge is prohibited.

§ 21.913 (c) *Registration of hunters.* Each person to whom has been issued a permit to hunt on the refuge shall register his name and address at an established checking station with the officer in charge, or his deputy, and shall produce for inspection his State hunting license, and if hunting migratory waterfowl, a properly validated Federal migratory bird hunting stamp. Before leaving the refuge, each such person shall report to the officer in charge, or his deputy, at the checking station through which he entered, the species and number of each species of migratory waterfowl and the number of coots and Chinese pheasants taken by him each day during the time spent on such shooting areas, and whenever requested by any officer shall exhibit all such birds in his possession for inspection.

§ 21.913 (d) *Disorderly conduct, intoxication.* No person who is visibly intoxicated will be permitted to enter upon the refuge for the purpose of hunting, and any person who indulges in any disorderly conduct on the refuge will be removed therefrom by the officer in charge and dealt with as prescribed by law.

§ 21.913 (e) *Hunting dogs, horses.* Each person hunting on the public shooting grounds will be permitted to take his hunting dogs, not to exceed two in number, upon such areas for the purpose of retrieving dead or wounded birds, but such dogs shall not be permitted to run at large on the public shooting grounds or elsewhere on the refuge. Hunting from horseback will not be permitted and no mounted hunter will be allowed to enter the public shooting grounds.

The Order of the Acting Secretary of Agriculture of October 14, 1938,[2] permitting hunting on certain areas within the refuge is hereby revoked.

Approved, October 19, 1939.

E. K. BURLEW,
Acting Secretary of the Interior.

[F. R. Doc. 39-3906; Filed, October 23, 1939; 9:21 a. m.]

[2] 3 F.R. 2500 DI.

Notices

DEPARTMENT OF STATE.

TRADE AGREEMENT NEGOTIATIONS WITH URUGUAY

Public Notice

Pursuant to section 4 of an act of Congress approved June 12, 1934, entitled "An Act to Amend the Tariff Act of 1930," as extended by Public Resolution No. 10, approved March 1, 1937, and to Executive Order No. 6750, of June 27, 1934, I hereby give notice of intention to negotiate a trade agreement with the Government of Uruguay.

All presentations of information and views in writing and applications for supplemental oral presentation of views with respect to the negotiation of such agreement should be submitted to the Committee for Reciprocity Information in accordance with the announcement of this date issued by that Committee concerning the manner and dates for the submission of briefs and applications, and the time set for public hearings.

[SEAL] CORDELL HULL,
Secretary of State.

OCTOBER 20, 1939.

Committee for Reciprocity Information.

TRADE AGREEMENT NEGOTIATIONS WITH URUGUAY

PUBLIC NOTICE

Closing date for submission of briefs, November 18, 1939; closing date for application to be heard, November 18, 1939; public hearings open, December 5, 1939.

The Committee for Reciprocity Information hereby gives notice that all information and views in writing, and all applications for supplemental oral presentation of views, in regard to the negotiation of a trade agreement with the Government of Uruguay, notice of intention to negotiate which has been issued by the Secretary of State on this date, shall be submitted to the Committee for Reciprocity Information not later than 12 o'clock noon, November 18, 1939. Such communications should be addressed to "Chairman, Committee for Reciprocity Information, Old Land Office Building, Eighth and E Streets NW., Washington, D. C."

A public hearing will be held beginning at 10 a. m. on December 5, 1939, before the Committee for Reciprocity Information in the hearing room of the Tariff Commission in the Old Land Office Building, where supplemental oral statements will be heard.

Six copies of written statements, either typewritten or printed, shall be submitted, of which one copy shall be sworn to. Appearance at hearings before the Committee may be made only by those persons who have filed written statements and who have within the time prescribed made written application for a hearing, and statements made at such hearings shall be under oath.

By direction of the Committee for Reciprocity Information this 20th day of October 1939.

JOHN P. GREGG.
Secretary.

OCTOBER 20, 1939.

List of Products on Which the United States Will Consider Granting Concessions to Uruguay

NOTE: The rates of duty or tax indicated are those now applicable to products of Uruguay.

For the purpose of facilitating identification of the articles listed, reference is made in the list to the paragraph numbers of the tariff schedules in the Tariff Act of 1930, or, as the case may be, to the appropriate sections of the Internal Revenue Code. The descriptive phraseology is, however, in many cases limited to a narrower field than that covered by the numbered tariff paragraph or section in the Internal Revenue Code. In such cases only the articles covered by the descriptive phraseology of the list will come under consideration for the granting of concessions.

In the event that articles which are at present regarded as classifiable under the descriptions included in the list are excluded therefrom by judicial decision or otherwise prior to the conclusion of the agreement, the list will nevertheless be considered as including such articles.

United States Tariff Act of 1930, paragraph	Description of article	Present rate of duty
53	Oils, vegetable: Linseed or flaxseed, and combinations and mixtures in chief value of such oil.	4½¢ per lb.
701	Tallow	½¢ per lb. (plus 3¢ per lb. under sec. 2491 (a) of the Internal Revenue Code; see below).
701	Oleo stearin	1¢ per lb. (plus 3¢ per lb. under sec. 2491 (c) of the Internal Revenue Code; see below).
705	Extract of meat, including fluid.	15¢ per lb. [1]
706	Beef and veal, pickled or cured, not packed in airtight containers, not specially provided for.	6¢ per lb. but not less than 20% ad valorem.
706	Beef and veal, prepared or preserved, packed in airtight containers, not specially provided for.	6¢ per lb. but not less than 20% ad valorem.
762	Flaxseed	65¢ per bu. of 56 lbs.
1101 (a)	Wools: Donskoi, Smyrna, Cordova, Valparaiso, Ecuadorean, Syrian, Aleppo, Georgian, Turkestan, Arabian, Bagdad, Persian, Sistan, East Indian, Thibetan, Chinese, Manchurian, Mongolian, Egyptian, Sudan, Cyprus, Sardinian, Pyrenean, Oporto, Iceland, Scotch Blackface, Black Spanish, Kerry, Haslock, and Welsh Mountain; similar wools without merino or English blood; all other wools of whatever blood or origin not finer than 40s; all the foregoing—	
	In the grease or washed.	24¢ per lb. of clean content.
	Scoured	27¢ per lb. of clean content.
	On the skin	22¢ per lb. of clean content.
	Sorted, or matchings, if not scoured.	25¢ per lb. of clean content.

[1] This rate was bound against increase pursuant to the trade agreement with the United Kingdom, effective January 1, 1939.

United States Tariff Act of 1930, paragraph	Description of article	Present rate of duty
1102 (a)	Wools, not specially provided for, not finer than 44s:	
	In the grease or washed.	29¢ per lb. of clean content.
	Scoured	32¢ per lb. of clean content.
	On the skin	27¢ per lb. of clean content.
	Sorted, or matchings, if not scoured.	30¢ per lb. of clean content.
1530 (a)	Hides and skins of cattle of the bovine species (except hides and skins of the India water buffalo imported to be used in the manufacture of rawhide articles), raw or uncured, or dried, salted, or pickled.	10% ad valorem.
1603	Agates, unmanufactured	Free.
1625	Blood, dried, not specially provided for.	Free.
1627	Bones: Crude, steamed, or ground; bone dust, bone meal, and bone ash; and animal carbon suitable only for fertilizing purposes.	Free.
1685	Tankage of a grade used chiefly for fertilizers, or chiefly as an ingredient in the manufacture of fertilizers.	Free.
1755	Sausage casings, weasands, intestines, bladders, tendons, and integuments, all the foregoing not of sheep, lambs, or goats, and not specially provided for.	Free.
1780	Tankage, unfit for human consumption.	Free.

Internal Revenue Code section	Description of article	Present rate of import tax
2491 (a)	Tallow	3¢ per lb. (in addition to tariff duty).
2491 (c)	Oleo stearin	3¢ per lb. (in addition to tariff duty).

[1] Duty-free status of nitrogeneous materials used chiefly for fertilizers or chiefly as an ingredient in the manufacture of fertilizers bound pursuant to the trade agreement with the United Kingdom effective January 1, 1939.

[F. R. Doc. 39-3907; Filed, October 23, 1939; 9:21 a. m.]

DEPARTMENT OF AGRICULTURE.

Food and Drug Administration.

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO QUALITY OF CANNED APRICOTS

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS, AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 15, 1939, at 9:00 a. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of quality and specifying the form and manner of label statement of substandard quality for the food commonly known as canned apricots was convened, and was concluded at 12:15 p. m., on the same date. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. Within the time announced at the hearing within which interested persons might file written argument, proposed findings of fact, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing, which, if granted, would modify the proposal contained in the FEDERAL REGISTER.

6. There was controversy with reference to (a) trimming, (b) breakage tolerance, (c) substandard label statements.

7. Testimony was introduced tracing the development of standards with reference to the McNary-Mapes Amendment to the Food and Drugs Act of 1906, passed in 1930, and the formulation of a standard of quality under that amendment.

Under the regulation promulgated in 1931, under the McNary-Mapes Amendment to the Food and Drugs Act of 1906, the standard of quality for canned apricots read as follows:

"Canned apricots are the normally flavored and normally colored canned food consisting of (1) the normal and uniform sized, tender, unpeeled, mature, unblemished, pitted, unbroken halves of the fruit of the apricot tree, and (2) sugar solution. The weight of the fruit in the container is not less than three-fifths the weight of water which the sealed container will hold at 68 degrees F., except that when necessary to prevent crushing of the fruit, a tolerance not exceeding the weight of three average pieces is allowed. The liquid portion of the finished product reads not less than 16 degrees Brix (read at the proper temperature for the instrument used.)"

In 1932, the standard of quality and condition for canned apricots was repromulgated and the requirement for tender units was raised from 80 percent to 90 percent, and that is the requirement of the present McNary-Mapes standard for canned apricots. This was raised to 90 percent because the examination of thousands of cans of apricots showed that 20 percent of hard pieces did not occur in standard apricots; that such liberal tolerance was not needed under commercial conditions. The method for tenderness does not differ from that pro-

posed in Government's Exhibit No. 1, section 27.011, subsection (b), except that in the proposal there is a more detailed description of the method. The present proposal suggests that there be no tolerance for units not tender. From the evidence adduced, it would seem that from observation of samples of the product now on the market and of the product which has been on the market for many years that no tolerance for units not tender is needed by the canner. Therefore, it was the opinion of various witnesses that in the interest of the consumer quality standards should require that all units be tender.

The minimum size requirement under the McNary-Mapes Amendment originally was that units of ⅜ ounce or larger are considered of normal size. With this exception,

"Canned apricots which fail to meet the above standard only in that they consist of unpeeled whole apricots need not bear the low quality legend, if labeled 'whole apricots,' even though the units may fail to meet the requirements for normal size.

"Canned apricots which fail to meet the above standard only in that they consist of uniformly sliced peeled apricots, need not bear the low quality legend if labeled 'sliced peeled apricots.' In such cases, the requirement of 'not less than ⅜ of an ounce in weight' shall be changed to 'not less than 1/20 of an ounce for each unit.'"

this requirement was not changed.

The present proposal suggested that there be no requirement for size of whole apricots or slices; that the minimum size for halves be ⅖ ounce, and for quarters, ⅕ ounce. This proposal was based on the data gathered by Government witnesses as to what the existent facts were.

The requirement for uniformity of size under the McNary-Mapes standard, promulgated in 1931, reads as follows:

"The unit shall be considered uniform in size if the transverse diameter of any unit does not vary more than 12½ percent from the corresponding average diameter of the pieces of fruit in the container."

The provision was changed on two occasions. In 1932, the standard was amended so that the requirement was based on weight rather than on diameter, the definition being:

"The unit shall be considered uniform in size if the weight of the piece of largest size in the can shall be not more than 80 percent in excess of the weight of the smallest piece in the can."

The second change occurred in 1937, the definition reading as follows:

"The units are uniform in size, if the weight of the piece of largest size in the can be not more than twice the weight of the smallest piece in the can."

This is the requirement now in effect. The proposal submitted at the hearing was that this factor of uniformity of size be limited to whole apricots, halves, and quarters.

The original requirement for freedom from blemishes under the McNary-Mapes standard, promulgated in 1931, was as follows:

"The fruit shall be considered unblemished if 80 per cent or more of the pieces in the container are free from scabs, bruises, frostbites, sunburn, hail injury, green or brown colorations or other unsightly blemishes, and no piece shows blemishes in excess of 10 per cent of its convex area."

In the amended standard in 1932, the clause, "no piece shows blemishes in excess of 10 per cent of its convex area", was eliminated. Examination of many samples of apricots on the market, as well as study of conditions in canning apricots, showed, according to the testimony, that large blemishes could be easily removed, and, therefore, in the opinion of witnesses, this last clause was found unnecessary. There is no substantial difference in that requirement with reference to blemishes, as amended, from the proposal submitted at this hearing, although certain blemishes are grouped under broader classifications.

The requirement for normal contour or shape in the McNary-Mapes standard is essentially the same as the proposal submitted as a basis for receiving evidence in this hearing. The definition under the McNary-Mapes standard was as follows:

"The fruit shall be considered as unbroken halves when 80 per cent or more of the units are unbroken and not excessively trimmed. Excessive trimming is defined as that amount which destroys the normal shape of the half."

That requirement was not changed insofar as it refers to the normal contour or shape of the fruit, but it does differ from the suggestion with reference to untrimmed units contained in the proposal for this hearing. In the proposal, the requirement for untrimmed units refers to whole apricots, halves, and quarters. It is suggested that there be no tolerance for trimmed units since such units are easily removed and packed separately by the canner, and consultations with consumers have shown the presence of even one unit so trimmed as to destroy its normal contour or shape to be very objectionable.

The requirement for broken units, as defined in the original standard, reads as follows:

"The fruit shall be considered as unbroken halves when 80 per cent or more of the units are unbroken and not excessively trimmed."

The requirement was changed in 1932 by raising the requirement to 90 percent and adding the clause:

"The fruit shall be considered as unbroken halves when 90 per cent or more of the units are unbroken and not excessively trimmed, except that the presence of one broken unit against the cover which may have been broken by the operation of closing the can shall be disregarded."

This requirement is substantially the same as in the present proposal, although worded in a slightly different form. The tolerance for broken units is 5 percent in a container of 20 or more units, with not more than 1 unit in a container of less than 20 units, to be crushed or broken. It would seem necessary to have a slightly larger tolerance in the case of large units because in larger containers more than one unit may easily be crushed when the lid is applied.

In the McNary-Mapes Amendment, certain other factors of quality were included which are not included in the present proposal, namely, that the fruit be normally colored and normally flavored. The McNary-Mapes standard also required a minimum weight of fruit in the container. These considerations are not factors of quality. The weight of the fruit in the container is a factor of fill of container rather than a factor of quality, and, in 1932, it was dropped from the McNary-Mapes standard of quality.

An objective test for determining tenderness was described.

Evidence on the part of the industries recommended (1) that the words "normal contour" be changed to read "normal shape", (2) that the breakage tolerance be changed to read as follows:

"except in the case of mixed pieces, of irregular sizes and shapes, not more than 10 percent of the units in a container of ten or more units, and not more than one unit in a container of less than ten units is crushed or broken (a unit which has lost its normal shape because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken); but if more than 20 per cent of such units are crushed or broken, such canned apricots shall be considered to be mixed pieces of irregular sizes and shapes, subject to the labeling requirement specified therefor in Section 27.010 (b)",

(3) that a new subparagraph (7) be added, reading as follows:

"If syrup is added, the syrup solution shall be of sufficient strength so that the liquid portion of the finished product reads not less than 16 degrees Brix",

(4) that the words "irregular pieces" should be substituted for "mixed sizes", (5) that a provision should be added following subsection (d) in the form of a new subsection (e), to read as follows:

"If canned apricots meet the standard prescribed in subsection (a), in all re-

spects except that they do not conform to subparagraph (3), the label need not bear the statement 'Below Standard in Quality' nor the alternative statement prescribed in subsection (d) but shall bear in addition to the statements required in 27.010 (b) the statement 'Ungraded for Size'. If canned apricots meet the standard prescribed in subsection (a) in all respects except that they are canned in water, the label need not bear the statement 'Below Standard in Quality' nor the alternative statement prescribed in subsection (d), but shall bear in addition to the statements required in 27.010 (b) the statement 'In Water.' If canned apricots meet the standard prescribed in subsection (a) in all respects except that they are canned in juice, the label need not bear the statement 'Below Standard in Quality' nor the alternative statement prescribed in subsection (d), but shall bear in addition to the statements required in 27.010 (b) the statement 'In Juice.'"

8. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. Factors which go to make up quality in canned apricots are tenderness of the apricot ingredient; size of units in the cases of apricot halves and quarters; uniformity of size of units in the cases of whole apricots, halves, and quarters; freedom from blemishes; the shape of the units in the cases of whole apricots, halves, and quarters; and freedom from crushed or broken units. (R. pp. 21–22, 62–63)

2. In canned apricots, the biting or chewing characteristic of the apricot is an index of the quality factor, tenderness. This factor involves the maturity of the apricot and the extent to which it has been cooked. (R. p. 25)

3. Tenderness can be measured objectively by the following method:

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod 3/16 inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness. (R. pp. 34–36, 63)

4. Canned apricots which are of standard quality, as now on the market, do not contain units not tender. (R. p. 25)

5. The foregoing method outlined in Finding No. 3 is directly correlated with the consensus of consumer opinion of what constitutes tenderness in canned apricots. (R. pp. 37–38)

6. Size of units, as measured by the weight of the unit, is not a factor of quality in canned apricots except in the cases of halves and quarters. (R. pp. 39, 63–64)

7. Canned apricots which are of standard quality have a minimum size for halves and quarters at the present time. (R. pp. 39–40, 63–64) Halves and quarters smaller than such minimum size are commonly packed as substandard apricots at the present time. (R. pp. 39–40)

8. Halves and quarters have a minimum size of ⅖ ounce and ⅕ ounce, respectively. (R. pp. 40, 63–64) These minima are less than the minima adopted by the packers of 99 percent of the canned apricots produced in the United States. (R. pp. 40–41, 63–64)

9. Such weights are determinable as follows: The unit is placed on a screen and the liquid is allowed to drain therefrom for two minutes. The unit is then weighed. (R. pp. 41, 63–64)

10. The smallest and largest apricots are canned whole and each makes a product of high quality. (R. pp. 39, 63–64)

11. Uniformity of size of units is not a factor of quality in canned apricots unless the apricots are whole, halves, or quarters. (R. pp. 41, 64) Uniformity of size of units cannot be controlled under good commercial practice in the case of slices. (R. pp. 41, 64) Discrepancies in size are not objectionable to consumers when the units are small, such as slices. (R. pp. 41, 64) Uniformity of size is obviously not a factor in the quality of the product when the units are mixed pieces of irregular size. (R. pp. 41, 64)

12. Uniformity of size of units in the cases of whole, halves, or quarters is necessary in order to prevent variant numbers of units in servings of desserts and salads on the same table. (R. pp. 41–42, 64)

13. Freedom from blemishes such as scab, hail injury, discoloration, or other abnormalities is a factor of quality in canned apricots. (R. pp. 43, 64, 105–106, 114–116)

14. Such units are of reasonable uniformity of size if the weight of the largest unit is not more than twice the weight of the smallest unit in the container. (R. pp. 42, 64)

15. A tolerance for blemishes is necessary because of small blemishes not apparent in hand sorting as carried out under good commercial practice. (R pp. 43–44, 64) 20 percent of blemished units is a reasonable tolerance. (R. pp. 43–44, 64)

16. Normal contour or shape of the apricot ingredient is a factor of quality in canned apricots if the units are whole, halves, or quarters. (R. pp. 44, 64, 93) Mixed pieces of irregular shapes obviously have no normal shape or contour. (R. pp. 44, 64)

17. When the units are trimmed, normal shape can be preserved. (R. pp. 44, 64) It is possible for the canner to meet this quality factor by discarding all units so trimmed that their normal shape is not preserved. (R. pp. 44–45, 64) Consumers uniformity object to unevenly trimmed units. (R. pp. 45, 64)

18. Freedom from crushed or broken units is a factor of quality in canned apricots. (R. pp. 45, 64) A crushed unit is a unit pressed so as to destroy its normal shape. A broken unit is a unit separated into two or more parts. (R. pp. 45–46, 64) Crushed and broken units are not deliberately packed as canned apricots which are of standard quality at the present time. (R. pp. 46, 64, 111) The concussion resulting from the application of the lid to the can at high speeds under great pressure sometimes breaks or crushes the topmost unit of well-filled containers in good commercial practice. (R. pp. 46–47, 64, 112) For this reason, a tolerance for crushed and broken units is necessary, and a tolerance of 5 percent for containers of more than 20 units or of 1 unit for containers of less than 20 units is reasonable. (R. pp. 46–47, 64, 109–112)

19. A canner employing good commercial practice can meet each of the foregoing factors of quality in canned

apricots without difficulty. (R. pp. 47–48, 64–65)

20. Each factor of quality takes into consideration and makes due allowance for the differing characteristics of the several varieties of apricots. Some varieties can meet the various factors more easily than others, but all varieties can meet the foregoing factors of quality without difficulty under good commercial practice. (R. pp. 48–49, 65)

21. Each of the factors hereinbefore referred to has been in effect since 1931 in the standards of quality for canned apricots promulgated pursuant to the McNary-Mapes Amendment to the Food and Drugs Act of 1906. (R. pp. 20, 21, 22–23)

22. There has been no substantial change in the provision with respect to tenderness since the promulgation of such original standard in 1931, except that the tolerance for units not tender was reduced from 20 percent to 10 percent in 1932. (R. pp. 23–24)

23. There is no substantial difference between the measure of tenderness as referred to herein and the present McNary-Mapes standard except that the tolerance of 10 percent of units not tender is eliminated. (R. pp. 24–25) Elimination of such tolerance is justified because samples of canned apricots which are of standard quality as now on the market have shown no units to be present that are not tender. (R. p. 25)

24. The objective method of determining tenderness has been the same throughout the history of such standards promulgated under the McNary-Mapes Amendment and is an accurate and reliable method for determining tenderness. (R. p. 24)

25. There has been no change in the provisions of the standards promulgated under the McNary-Mapes Amendment for minimum size of units. (R. p. 26)

26. Small slices occur inadvertently, and it is impossible to eliminate them under good commercial practice. (R. pp. 39, 63–64) The smallest and largest apricots are canned whole and each makes a desirable product of high quality. (R. pp. 39, 63–64) $\frac{2}{5}$ ounce and $\frac{1}{5}$ ounce more truly represent the respective minimum sizes of normal sized halves and quarters than $\frac{3}{8}$ ounce and $\frac{3}{16}$ ounce. (R. pp. 26–27)

27. There have been no changes in the standards promulgated under the McNary-Mapes Amendment with respect to uniformity of size of units except that in 1932 such uniformity was placed upon a weight rather than upon a size basis, and except that in 1937 the degree of uniformity was reduced from a variation of 80 percent to 100 percent. (R. pp. 27–28)

28. No variation from the present McNary-Mapes Amendment with respect to uniformity is desirable, except that the factor of uniformity of size be limited to whole apricots, halves, and quarters. (R. p. 29)

29. The original standard of quality for canned apricots promulgated under the McNary-Mapes Amendment has not been changed with respect to the factor of freedom from blemishes except that in 1932 the clause, "no piece shows blemishes in excess of 10 per cent of its convex area", was eliminated. (R. pp. 29–30)

30. It is not desirable to change the present McNary-Mapes standard with respect to freedom from blemishes. (R. p. 30)

31. There have been no changes in the original requirement of the McNary-Mapes standards with respect to the normal shape of the apricot units. (R. p. 30)

32. No changes in the present McNary-Mapes standard are desirable except the elimination of the tolerance for excessively trimmed units. The elimination of the tolerance is reasonable because canners under good commercial practice can and do remove all excessively trimmed units prior to canning. Consumers object to the presence of even one unit so trimmed as to destroy its normal shape. (R. p. 31)

33. There have been no changes in the original McNary-Mapes standard with respect to broken units except that the tolerance was reduced in 1932 from 20 percent to 10 percent of broken units and a proviso added to permit of one crushed unit resulting from the application of the lid. (R. pp. 31–32)

34. All of the foregoing findings of fact are reasonable and will promote honesty and fair dealing in the interest of the consumer. (R. pp. 49, 50)

35. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have a simple and understandable statement of substandard quality placed on the label. "Below Standard in Quality", qualified by an explanation wherein the product falls below standard in quality, is such a statement. (R. pp. 51–52, 73–74) If the apricots are not tender, the qualifying statement "Not Tender" furnishes an accurate explanation of the reason the product is below standard. Likewise, the qualifying statement "Small Halves", or "Small Quarters", if under minimum size; "Mixed Sizes", if not of uniform size; "Blemishes", if over the tolerance for blemishes; "Unevenly Trimmed", if trimmed to destroy normal shape; "Partly Crushed or Broken", if over the tolerance for crushed or broken units; respectively furnish accurate explanations of the reason the product is below standard. (R. pp. 51–52, 95)

36. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have such statement immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Apricots", together with words and statements required or authorized to appear with such name by the definition and standard of identity for canned apricots. (R. p. 52)

37. Such label requirements for apricots of substandard quality would not be practicable under good commercial practices in instances such as where the product fell below the standard in several respects. (R. p. 53)

38. In such event, the statement "Below Standard in Quality Good Food—Not High Grade" would be reasonable, would be informative to the consumer, and would promote honesty and fair dealing in the interest of the consumer. (R. p. 53)

39. It is reasonable and it would promote honesty and fair dealing in the interest of the consumer to have such statement printed in two lines of Cheltenham bold condensed caps, the words "Below Standard in Quality" to constitute the first line, and the second to immediately follow. If the quantity of the contents of the container is less than 1 pound, such type of the first line should be 12-point, and the second, 8-point. If such quantity is 1 pound or more, such type of the first line should be 14-point, and of the second, 10-point. Such statement should be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Apricots" or any pictorial representation of an apricot is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. pp. 74–76)

40. The wording of this statement differs from the statement required under the present McNary-Mapes standard only in the elimination of the explanation "U. S.", and a substitution of "Below Standard in Quality" for "Below Standard." (R. p. 76) The explanation "U. S." on labels has been found to be misleading to consumers. (R. pp. 77–78) The foregoing findings for manner and form of the label statement differ from the present McNary-Mapes requirements with respect to the elimination of certain technical requirements. (R. pp. 75–76)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of quality and form and manner of label statement of substandard quality for the food commonly known as canned apricots is hereby suggested to be promulgated as a regulation:

§ 27.011 *Canned apricots—Quality; label statement of substandard quality.* (a) The standard of quality for canned apricots is as follows:

(1) All units tested in accordance with the method prescribed in subsec-

tion (b) are pierced by a weight of not more than 300 grams;

(2) In the cases of halves and quarters, the weight of each unit is not less than ⅖ ounce and ⅕ ounce respectively;

(3) In the cases of whole apricots, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein;

(4) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discloration, or other abnormality;

(5) In the cases of whole apricots, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal contour; and

(6) Except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than one unit in a container of less than 20 units, is crushed or broken (a unit which has lost its normal contour because of ripeness, and which bears no mark of crushing, shall not be considered to be crushed or broken);

(b) Canned apricots shall be tested by the following method to determine whether or not they meet the requirements of clause (1) of subsection (a):

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{3}{16}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned apricots falls below the standard prescribed by subsection (a), the label [unless it bears the statement specified in subsection (d)] shall bear the statement "Below Standard in Quality ——", the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned apricots fail to meet, as follows: (1) "Not Tender"; (2) "Small Halves", or "Small Quarters", as the case may be; (3) "Mixed Sizes"; (4) "Blemished"; (5) "Unevenly Trimmed"; (6) "Partly Crushed or Broken". Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Apricots" and the words and statements required or authorized to appear with such name by section 27.010 (b).

(d) In lieu of the statement or statements specified in subsection (c), the label may bear the statement, "Below Standard in Quality Good Food—Not High Grade," printed in two lines of Cheltenham bold condensed caps. The words "Below Standard in Quality" shall constitute the first line, and the second line shall immediately follow. If the quantity of the contents of the container is less than one pound, the type of the first line shall be 12-point, and of the second, 8-point. If such quantity is one pound or more, the type of the first line shall be 14-point, and of the second 10-point. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Apricots" or any pictorial representation of an apricot is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

OCTOBER 4, 1939.

[F. R. Doc. 39-3894; Filed, October 20, 1939; 2:54 p. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO FILL OF CONTAINER OF CANNED APRICOTS

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for

defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 15, 1939, at 12:15 p. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of fill of container and specifying the form and manner of label statement of substandard fill of container for the food commonly known as canned apricots was convened, and was concluded at 3 p. m., on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and written argument.

5. Within the time announced at the hearing within which interested persons might file proposed findings of fact, written argument, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing.

6. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. The quantity of the optional apricot ingredient which can be placed in a container varies, depending upon the method of packing and upon the shape, size, degree of maturity, and specific gravity of the units of the optional apricot ingredient. (R. pp. 24, 25, 36–38)

2. With the exception of comparatively few slack filled cans, canned apricots as they appear on the market at the present time contain the maximum quantity of the optional apricot ingredient which, using reasonably good factory practice, can be placed and sealed in each can and processed by heat to prevent spoilage, without crushing or breaking the apricot units. (R. pp. 24, 26, 27, 36–38)

3. The maximum quantity of the optional apricot ingredient varies, depending on the size of the container, the method of packing, the form, size, firmness of units, the necessity for having sufficient liquid to insure proper processing, and other factors. (R. pp. 24, 25, 36–38)

4. The can should contain the greatest number of apricot units the canner can place therein and properly seal and process. (R. pp. 25, 26, 27, 36–38)

5. Knowing the form, shape, size, degree of maturity, and comparative specific gravity of the apricot units in any lot being canned, canners know the greatest amount of apricot units which can be placed in a can of any given size without damage, and canners employ inspectors to insure proper filling by packers. (R. pp. 25, 30, 31)

6. None of the various methods which have been studied for objective measurements of fill have shown any uniform correlation between the quantity of apricot units put in and the quantity of apricot units cut out. Assurance to the consumer of a can full of apricots can be obtained only by a requirement as to the quantity put in the container. (R. pp. 24, 38, 44, 51, 54–55)

7. It is necessary and desirable in the interest of the consumer that canned apricots falling below a standard of fill of container bear on the label a simple and understandable statement of that fact. "Below Standard in Fill" is such a statement. (R. p. 27)

8. If canned apricots fall below a standard of fill of container, it is necessary and desirable in the interest of the consumer that the label bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement should be in 12-point type; if such quantity is 1 pound or more, the statement should be in 14-point type. Such statement should be enclosed within lines not less than 6 points in width, forming a rectangle; but if the apricots also fall below the standard of quality for canned apricots and bear the label statement of substandard quality specified in the standard of quality for canned apricots, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Apricots" or any pictorial representation of an apricot is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. pp. 27, 28)

9. The substandard statement now required by the regulations issued pursuant to the McNary-Mapes Amendment is "Below U. S. Standard" followed by "Slack Fill", in the case of excess head space; and by the statement "Contains Excessive Added Liquid", in the case of excessive packing medium. (R. p. 28) These statements are required to appear in substantially the same form as herein proposed. (R. p. 29)

10. The phrase "Below Standard", as proposed, differs from the present requirement "Below U. S. Standard". The term "U. S." on a food product has been found to imply to consumers that the product has been packed under the supervision of the U. S. Government. The phrase "In Fill", as proposed, differs from the present requirement of "Slack Fill" or "Contains Excessive Added Liquid". The standard herein proposed is based on a can filled to its maximum capacity with fruit. If adopted and met, the headspace will not be excessive, nor will there be excessive liquid present. If not met, the expression "Below Standard in Fill" is simpler and more understandable in describing a product which fails to meet a standard based on the amount of apricots present rather than on the amount of liquid and apricots or the quantity of liquid present. (R. pp. 29, 30)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the forgoing findings of fact, the following reasonable standard of fill of container and the form and manner of label statement of substandard fill of container for the food commonly known as canned apricots is hereby suggested to be promulgated as a regulation:

§ 27.012 *Canned apricots—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned apricots is the maximum quantity of the optional apricot ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned apricots fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified in Section 27.011 (d) is also used, both statement (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Apricots" or any pictorial representation of an apricot is viewed, wherever such name or representation ap-

pears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

OCTOBER 5, 1939.

[F. R. Doc. 39-3893; Filed, October 20, 1939; 2:53 p. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO FILL OF CONTAINER OF CANNED PEARS

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 17, 1939, at 11:45 a. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of fill of container and specifying the form and manner of label statement of substandard fill of container for the food commonly known as canned pears was convened, and was concluded at 1:15 p. m., on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opporunity to file proposed findings of fact and written argument.

5. Within the time announced at the hearing within which interested persons might file proposed findings of fact, written argument, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing.

6. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. The quantity of the optional pear ingredient which can be placed in a container varies, depending upon the method of packing and upon the shape, size, degree of maturity, and specific gravity of the units of the optional pear ingredient. (R. pp. 25, 39, 41)

2. With the exception of comparatively few slack filled cans, canned pears as they appear on the market at the present time contain the maximum quantity of the optional pear ingredient which, using reasonably good factory practice, can be placed and sealed in each can and processed by heat to prevent spoilage, without crushing or breaking the pear units. (R. pp. 25, 27, 39, 41)

3. The maximum quantity of the optional pear ingredient varies, depending on the size of the container, the method of packing, the form, size, firmness of units, the necessity for having sufficient liquid to insure proper processing, and other factors. (R. pp. 25, 39, 41)

4. The can should contain the greatest number of pear units the canner can place therein and properly seal and process. (R. pp. 25, 26, 39, 41)

5. Knowing the form, shape, size, degree of maturity and comparative specific gravity of the pear units in any lot being canned, canners know the greatest amount of pear units which can be placed in a can of any given size without damage, and canners employ inspectors to insure proper filling by packers. (R. p. 26)

6. None of the various methods which have been studied for objective measurements of fill have shown any uniform correlation between the quantity of pear units put in and the quantity of pear units cut out. Assurance to the consumer of a can full of pears can be obtained only by a requirement as to the quantity put in the container. (R. pp. 24, 25, 27, 30, 31, 32, 39, 40, 48–54, 56, 57, 64, 65)

7. It is necessary and desirable in the interest of the consumer that canned pears falling below a standard of fill of container bear on the label a simple and understandable statement of that fact. (R. pp. 27, 28) "Below Standard in Fill" is such a statement. (R. pp. 27, 28)

8. If canned pears fall below a standard of fill of container, it is necessary and desirable in the interest of the consumer that the label bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement should be in 12-point type; if such quantity is 1 pound or more, the statement should be in 14-point type. Such statement should be enclosed within lines not less than 6 points in width, forming a rectangle; but if the pears also fall below the standard of quality for canned pears and bear the label statement of substandard quality specified in the

standard of quality for canned pears, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Pears" or any pictorial representation of a pear is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. pp. 28, 29)

9. The substandard statement now required by the regulations issued pursuant to the McNary-Mapes Amendment is "Below U. S. Standard" followed by "Slack Fill", in the case of excess head space; and by the statement "Contains Excessive Added Liquid", in the case of excessive packing medium. (R. p. 29) These statements are required to appear in substantially the same form as herein proposed. (R. p. 29)

10. The phrase "Below Standard", as proposed, differs from the present requirement "Below U. S. Standard". The ter "U. S." on a food product has been found to imply to consumers that the product has been packed under the supervision of the U. S. Government. The phrase "In Fill", as proposed, differs from the present requirement of "Slack Fill" or "Contains Excessive Added Liquid". The standard herein proposed is based on a can filled to its maximum capacity with fruit. If adopted and met, the headspace will not be excessive, nor will there be excessive liquid present. If not met, the expression "Below Standard in Fill" is simpler and more understandable in describing a product which fails to meet a standard based on the amount of pears present rather than on the amount of liquid and pears or the quantity of the liquid present. (R. pp. 29, 30)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of fill of container and the form and manner of label statement of substandard fill of container for the food commonly known as canned pears is hereby suggested to be promulgated as a regulation:

§ 27.022. *Canned pears—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned pears is the maximum quantity of the optional pear ingredient which can be sealed in a container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned pears fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified by section 27.021 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Pears" or any pictorial representation of a pear is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which To File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

OCTOBER 7, 1939.

[F. R. Doc. 39-3895; Filed, October 20, 1939; 2:54 p. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO QUALITY OF CANNED PEARS

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDABD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue N. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a pubilc hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 15, 1939, at 5:45 p. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of quality and specifying the form and manner of label statement for the food commonly known as canned pears was convened, and was concluded at 11:45 a. m., on April 17, 1939. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. Within the time announced at the hearing within which interested persons might file written argument, proposed findings of fact, or both, various interested persons filed proposed findings of

fact, together with written argument in support thereof, based upon the evidence adduced at the hearing, which, if granted, would modify the proposal contained in the FEDERAL REGISTER.

6. There was controversy with respect to (a) the weight of the pear units in the cases of halves and quarters, (b) the amount of adhering peel in peeled canned pears, (c) label statements.

7. Testimony was introduced tracing the development of standards with reference to the McNary-Mapes Amendment to the Food and Drugs Act of 1906, passed in 1930, and the formulation of a standard of quality under that amendment.

Various factors which go to make up a quality standard were considered, together with objective measurements for determining such factors. These factors and objective measurements were made up after conferences with canners, with the trade, with consumers and with expert graders in all sections of the country. The factors which enter into the quality of canned pears differ somewhat, depending upon the form of the unit of the pear ingredient. Tenderness is a factor. The size of the unit is a factor if the units are halves or quarters. Uniformity of size of unit is a factor in the cases of whole pears, halves, and quarters. Absence of peel is a factor in peeled pears. Freedom from blemishes is a factor. The contour or shape of the units is a factor in the cases of whole pears, halves, and quarters, and relative freedom from crushed or broken units is a factor.

An objective test for determining the factor of tenderness, as set forth in the Government's proposal (Government's Exhibit No. 1, Sec. 27.021, subsection (b)), was described. No other objective test for this factor was offered.

It was testified that absence of peel is a factor of quality. Pieces of peel have an unsightly appearance on the white surface of peeled pears. All canners recognize this fact and will not intentionally pack pears bearing pieces of peel unless packing an unpeeled product. In the peeling of pears either by machinery or by hand, small areas of peel are sometimes left unremoved. Most of these can be and are readily sorted out and the peel removed by hand, but small areas of peel will occasionally escape notice in good commercial practice.

It was testified that pears may be blemished with scab, hail injury, discoloration, or other minor abnormalities such as bird pecks. Scab leaves a section of scar tissue on the pear which is hard and unsightly. Discoloration is usually the result of bruises, frost bite, or other undesirable conditions. In the opinion of many qualified witnesses, canned pears are, for practical canning purposes, relatively free from blemishes if not more than ⅕ of the units in the container are blemished. Pears are relatively large units and blemishes are not common so they can be readily sorted and trimmed to remove such blemishes. Even when a considerable proportion of the raw pears are blemished, many of the blemishes are very small. A tolerance of 20 percent would be sufficient, from the thousands of finished cans of pears examined, to make due allowance for such small and not too apparent blemishes.

It was testified that a tolerance of 10 percent of crushed or broken units would be reasonable. Many containers carry less than 10 units. In a container of less than 10 units, 1 crushed or broken unit is as close to absolute freedom as reasonably can be required. If, however, the number of crushed or broken units is 20 percent, or more, experience would indicate that either they must have been added as such or that the pears were canned by some method which crushed or broke more units than is usual in good commercial practice.

The changes in the standards of quality were traced since the first promulgation of quality standards under the McNary-Mapes Amendment. In 1931, a standard of quality for canned pears was promulgated, and the minimum standard requirement for tender units was raised in 1932 from 80 percent to 90 percent, which is the present standard for quality. The present proposal (Government's Exhibit No. 1) suggests the abolishment of tolerance for units not tender and requires all units to meet the test for tenderness.

The present proposal (Government's Exhibit No. 1) changes the requirements for sizes of whole pears or slices from the requirement set forth in the regulations promulgated under the McNary-Mapes Amendment to the minimum size of ⅘ ounce for halves and ⅖ ounce for quarters. The requirements for uniformity of size under the McNary-Mapes standard, promulgated in 1931, was changed on two occasions, once in 1932 so that the requirement was based on weight rather than on diameter, and the second change in 1937 providing that the units are uniform sized and limiting the weight of the piece the largest size in the can to not more than twice the weight of the smallest piece in the can. This requirement is now in effect and is the requirement set forth in the present proposal. (Government's Exhibit No. 1)

Under the McNary-Mapes standard, pears are considered unblemished if 80 percent of the pieces in the container are free from scab, bruises, gritty portions, raggedness, pink or brown colorations, or other unsightly blemishes. The term "raggedness" means a frayed condition of the edges. Canned pears of a type in which gritty portions are normally characteristic need not bear the low quality legend because of grittyness alone if labeled to show the particular type to which they belong. The present proposal (Government's Exhibit No. 1) suggests no essential changes except the elimination of raggedness and gritty portions as blemishes, since raggedness is natural to some varieties of canned pears and since no reliable objective test for measuring gritty portions is known.

The requirement with respect to untrimmed units which has been suggested in the proposal of the Government and by various witnesses differs from the previous requirements in that the present suggestion separates the two factors of quality, namely, excessively trimmed and broken units, and proposes that the tolerance for pieces trimmed so as to destroy their normal contour or shape be eliminated. This suggestion was made because trimmed units are easily removed and packed separately by the cannery. Consultations with consumers show the presence of even one unit so trimmed as to destroy its normal contour or shape to be very objectionable.

For the purposes of labeling, testimony was adduced that the expression "Below Standard in Quality" would best describe the condition of canned pears which fell below a standard of quality; that this phrase should be qualified, showing what respect pears fell below the standard, and that when the product fell below the standard in several respects, the statement "Below Standard in Quality Good Food—Not High Grade" was recommended.

It was testified that in the cases of slices, dice, and mixed pieces of irregular size, uniformity of size of units is not a factor of quality and that no minima should be set for these units as the variances in size are not objectionable to consumers.

The weight of the evidence adduced at the hearing was to the effect that the proposal that no peel be present in the standard canned pears was unreasonably stringent, but that the tolerance of one square inch of peel per pound of net contents, which is the present requirement under the McNary-Mapes Amendment, is reasonable and capable of being complied with in good commercial practice.

Representatives of the industry introduced substantial evidence that the proposed minimum size of halved and quartered pears, contained in Government's Exhibit No. 1, of four-fifths and two-fifths ounce, respectively, was too stringent and would throw many normal sized pears into the substandard classification.

The suggestion was made that pears not of uniform size be labeled as below standard in quality because they consisted of "irregular pieces" rather than because they consisted of "mixed sizes" as proposed. This suggestion was made in connection with the suggestion that pears ungraded for size may not be regarded as substandard in quality, but no substantial evidence in support of the contention was introduced. Government witnesses testified that uniformity of size is a factor of quality in canned

pears, and this testimony was not controverted. Such being the case, the product ungraded for size, if beyond the range of uniformity agreed upon as standard uniformity, would be inherently substandard and should bear the appropriate legend.

8. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. Factors which go to make up quality in canned pears are tenderness of the pear ingredient; size of units in the cases of pear halves and quarters; uniformity of size of units in the cases of whole pears, halves, and quarters; absence of peel in all forms of the pear unit except in the case of unpeeled pears; freedom from blemishes; the shape of the units, in the cases of whole pears, halves, and quarters; freedom from crushed or broken units. (R. pp. 21–22, 62)

2. In canned pears, the biting or chewing characteristic of the pear is an index of the quality factor, tenderness. This factor involves the maturity of the pear and the extent to which it has been cooked. (R. pp. 22, 63)

3. Such tenderness is measurable objectively by the following method:

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $^{5}/_{32}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness. (R. pp. 22–23, 63, Affidavit of Chester A. Ray)

4. It is not necessary to subject small units, such as dice, to an objective test. (R. pp. 23, 63)

5. The foregoing method outlined in Finding No. 3 is directly correlated with the consensus of consumer opinion of what constitutes tenderness in canned pears. (R. pp 26, 27, 63)

6. Minimum size of units is not a factor of quality in canned pears except in the cases of halves and quarters. (R. pp. 27, 28) The smallest and the largest pears are canned whole and each makes a product of high quality. (R. p. 28) It is impossible under good commercial practice to control minimum size in the cases of slices and dice, and consumers do not object to small units in these forms. (R. p. 28) Mixed pieces of irregular size obviously have no minimum size. (R. 28, 63)

7. Canned pears which are of standard quality have a minimum size for halves and quarters at the present time. (R. pp. 28, 29, 127–128, 135) Halves and quarters smaller than such minimum size are commonly packed as substandard pears at the present time. (R. pp. 28, 29, 63, 110, 135)

8. Halves and quarters have a minimum size of ⅗ ounce and $^{3}/_{10}$ ounce, respectively. (R. pp. 29, 30, 31, 63, 68–69, 92–97, 110, 127–128, 129, 130, 135, Affidavit of Chester A. Ray) These minima are less than the minima adopted by the packers of most of the canned pears produced in the United States. (R. pp. 31, 63, 110, 135)

9. Such weights are determinable as follows: The unit is placed on a screen and the liquid is allowed to drain therefrom for two minutes. The unit is then weighed. (R. pp. 31, 63)

10. Uniformity of size of units is not a factor of quality in canned pears unless the units are whole, halves, or quarters. (R. pp. 31, 32, 63) Discrepancies in size are not objectionable to the consumers when the units are small, such as slices or dice. (R. pp. 31, 32, 63) Uniformity of size cannot be controlled under the best commercial practice in the cases of slices and dice. (R. pp. 31, 32, 63) Uniformity of size is obviously not a factor in the quality of the product when the units are mixed pieces of irregular size. (R. pp. 32, 63)

11. Uniformity of size of units in the cases of whole, halves, or quarters is necessary in order to prevent variant numbers of units in servings of desserts and salads on the same table. (R. pp. 32, 63)

12. Such units are of reasonable uniformity of size if the weight of the largest unit is not more than twice the weight of the smallest unit in the container. (R. pp. 32, 63, Affidavit of Chester A. Ray) Weights of such units are determined in the same manner as weights for minimum size of units. (R. pp. 33, 63)

13. Absence of peel is a factor of quality in canned pears except in the case of pears canned as unpeeled pears. (R. pp. 33, 63, 116–121, 123–127, 135)

14. Adhering peel ordinarily can be removed completely from the pear, but some peel is occasionally left in good commercial practice. (R. pp. 34, 63, 110–111, 116–121, 123–127, 135) 1 square inch of peel per pound of net contents is a reasonable maximum tolerance for peel present in the finished product. (R. pp. 34, 63, 110–111, 116–121, 123–127, 130–132, 135, Affidavit of Chester A. Ray)

15. Freedom from blemishes such as scab, hail injury, discoloration, or other abnormalities is a factor of quality in canned pears. (R. pp. 35, 63)

16. A tolerance for blemishes is necessary because of small blemishes not apparent in hand sorting as carried out under good commercial practice. (R. pp. 35, 63) 20 percent blemished units is a reasonable tolerance. (R. pp. 35, 63, Affidavit of Chester A. Ray)

17. Normal contour or shape of the pear unit is a factor of quality in canned pears if the units are whole, halves, or quarters. (R. pp. 35, 36, 64, 111, 121–123, 135)

18. When the units are trimmed, normal shape can be preserved. (R. pp. 36, 64) It is possible for the canner to meet this quality factor by discarding all units so trimmed that their normal shape is not preserved. (R. pp. 36, 37, 64, Affidavit of Chester A. Ray) Consumers uniformly object to unevenly trimmed units. (R. pp. 36, 37, 64)

19. Freedom from crushed or broken units is a factor of quality in canned pears. (R. pp. 21–22, 37–38, 64) A crushed unit is a unit pressed so as to destroy its normal shape. (R. pp. 37, 64, 97–98) A broken unit is a unit separated into two or more parts. (R. pp. 37, 64, 97–98) Crushed and broken units are not deliberately packed as canned pears which are of standard quality at the present time. (R. pp. 37, 38, 64) The concussion resulting from the application of the lid to the can at high speeds under great pressure sometimes breaks or crushes the topmost unit of well-filled containers in good commercial practice. (R. pp. 37, 38, 64) For this reason, a tolerance for crushed and broken units is necessary and a tolerance of 10 percent for containers of more than 10 units or of 1 unit for containers of less than 10 units is reasonable. (R. pp. 38, 64, Affidavit of Chester A. Ray)

20. A canner employing good commercial practice can meet each of the foregoing factors of quality in canned pears without difficulty. (R. pp. 39, 40, 64–65, Affidavit of Chester A. Ray)

21. Each factor of quality takes into consideration and makes due allowance for the differing characteristics of the several varieties of pears. Some varieties can meet the various factors more easily than others, but all varieties can meet the foregoing factors of quality without difficulty under good commercial practice. (R. pp. 40, 65–66)

22. Each of the factors hereinbefore referred to has been in effect since 1931 in the standards of quality for canned pears promulgated by the Secretary of Agriculture pursuant to the McNary-Mapes Amendment to the Food and Drugs Act of 1906. (R. pp. 40, 41)

23. There has been no substantial change in the provision with respect to tenderness since the promulgation of such original standard in 1931, except that the tolerance for units not tender was reduced from 20 percent to 10 percent. (R. pp. 43, 44)

24. There is no substantial difference between the measure of tenderness as referred to herein and the present McNary-Mapes standard except that the tolerance of 10 percent of units not tender is eliminated. (R. p. 44) Elimination of such tolerance is justified by present commercial practice. (R. pp. 44, 45)

25. The objective method of determining tenderness has been the same throughout the history of such standards promulgated under the McNary-Mapes Amendment and is an accurate and reliable method for determining tenderness. (R. pp. 26, 44)

26. There has been no change in the provisions of the standards promulgated under the McNary-Mapes Amendment for minimum size of units. (R. p. 45)

27. The measure of that factor as recommended differs from the present legal standard only in the elimination of a requirement for a minimum size for whole pears and slices, and in the reduction of the minimum size requirement of halves and quarters from ¾ and ⅜ ounce, respectively, to ⅗ and 3/10 ounce, respectively. (R. pp. 45, 46) Small slices occur inadvertently, and it is impossible to eliminate them under good commercial practice. (R. p. 28) Very small whole pears are a highly desirable quality product. (R. p. 28) ⅗ ounce and 3/10 ounce more truly represent the respective minimum sizes of normal sized halves and quarters than ¾ ounce and ⅜ ounce. (R. p. 46)

28. There have been no changes in the standards promulgated under the McNary-Mapes Amendment with respect to uniformity of size of units except that in 1932 such uniformity was placed upon a weight rather than upon a size basis, and except that in 1937 the degree of uniformity was reduced from a variation of 80 percent to 100 percent. (R. pp. 46, 47)

29. No variation from the present McNary-Mapes requirement with respect to uniformity is desirable. (R. p. 48)

30. There have been no changes from the original standard promulgated under the McNary-Mapes Amendment with respect to freedom from blemishes. (R. p. 48)

31. It is not desirable to change the present McNary-Mapes standard with respect to freedom from blemishes, except to eliminate raggedness and gritty portions as blemishes. (R. p. 49) Raggedness is a natural characteristic of some varieties of pears. (R. p. 49) Gritty portions cannot be measured objectively. (R. p. 49, Affidavit of Chester A. Ray)

32. There have been no changes in the original requirement of the McNary-Mapes standards with respect to the normal shape of the pear units. (R. p. 49)

33. It is desirable that the tolerance for units not of normal contour or shape provided for in the present regulations promulgated pursuant to the McNary-Mapes Amendment be eliminated. The elimination of such tolerance is reasonable because canners under good commercial practice can and do remove all excessively trimmed units prior to canning. (R. pp. 49, 50)

34. There have been no changes in the original McNary-Mapes standard with respect to broken units except that the tolerance was reduced from 20 percent to 10 percent of broken units and a proviso added to permit of one crushed unit resulting from the application of the lid. (R. pp. 50, 51)

35. No essential change in the present McNary-Mapes standard with respect to crushed or broken units is desirable. (R. p. 51)

36. There has been no essential change in the original McNary-Mapes standard with respect to absence of peel. (R. p. 52)

37. No change in the present McNary-Mapes requirement for absence of peel is desirable. (R. p. 52)

38. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have a simple and understandable statement of substandard quality placed on the label. "Below Standard in Quality" qualified by an explanation wherein the product falls below standard in quality is such a statement. (R. pp. 56, 57, 99–101) If the pears are not tender, the qualifying statement "Not Tender" furnishes an accurate explanation of the reason the product is below standard. Likewise, the qualifying statement "Small Halves", or "Small Quarters", if under minimum size; "Mixed Sizes", if not of uniform size; "Not Well Peeled", if over the tolerance for peel; "Blemished", if over the tolerance for blemishes; "Unevenly Trimmed", if trimmed to destroy normal shape; "Partly Crushed or Broken", if over the tolerance for crushed or broken units; respectively furnish accurate explanations of the reason the product is below standard. (R. pp. 56, 57, 85, 87, 99–101)

39. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have such statement immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Pears", together with words and statements required or authorized to appear with such name by the definition and standard of identity for canned pears. (R. pp. 57, 87)

40. Such label requirements for pears of substandard quality would not be practicable under good commercial practices in instances where the product fell below the standard in several respects. (R. pp. 57, 58, 87, 99–101)

41. In such event, the statement "Below Standard in Quality Good Food—Not High Grade" would be reasonable, would be informative to the consumer, and would promote honesty and fair dealing in the interest of the consumer. (R. pp. 58, 87, 88, 99–101)

42. It is reasonable and it would promote honesty and fair dealing in the interest of the consumer to have such statement printed in two lines of Cheltenham bold condensed caps, the words "Below Standard in Quality" to constitute the first line, and the second to immediately follow. If the quantity of the contents of the container is less than 1 pound, such type of the first line should be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, such type of the first line should be 14-point, and of the second, 10-point. Such statement should be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Pears" or any pictorial representation of a pear is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. pp. 88–90)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of quality and form and manner of label statement of substandard quality for the food commonly known as canned pears is hereby suggested to be promulgated as a regulation:

§ 27.021 *Canned pears—Quality; label statement of substandard quality.* (a) The standard of quality for canned pears is as follows:

(1) All units tested in accordance with the method prescribed in subsection (b)

are pierced by a weight of not more than 300 grams;

(2) In the cases of halves and quarters, the weight of each unit is not less than ⅜ ounce and 3/10 ounce, respectively;

(3) In the cases of whole pears, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein;

(4) Except in the case of unpeeled pears, not more than one square inch of peel per pound of net contents is present;

(5) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormality;

(6) In the cases of whole pears, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal shape; and

(7) Except in the case of mixed pieces of irregular sizes and shapes, not more than 10 percent of the units in a container of 10 or more units, and not more than 1 unit in a container of less than 10 units, is crushed or broken (a unit which has lost its normal contour or shape because of ripeness, and which bears no mark of crushing, shall not be considered to be crushed or broken);

(b) Canned pears shall be tested by the following method to determine whether or not they meet the requirements of clause (1) of subsection (a):

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{32}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned pears falls below the standard prescribed by subsection (a), the label [unless it bears the statement specified by subsection (d)] shall bear the statement "Below Standard in Quality ------", the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned pears fail to meet, as follows: (1) "Not Tender"; (2) "Small Halves", or "Small Quarters", as the case may be; (3) "Mixed Sizes"; (4) "Not Well Peeled"; (5) "Blemished"; (6) "Unevenly Trimmed"; (7) "Partly Crushed or Broken". Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Pears" and the words and statements required or authorized to appear with such name by Section 27.020 (b).

(d) In lieu of the statement or statements specified in subsection (c), the label may bear the statement "Below Standard in Quality Good Food—Not High Grade", printed in two lines of Cheltenham bold condensed caps. The words "Below Standard in Quality" shall constitute the first line, and the second line shall immediately follow. If the quantity of the contents of the container is less than 1 pound, the type of the first line shall be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, the type of the first line shall be 14-point, and of the second, 10-point. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Pears" or any pictorial representation of a pear is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which To File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

OCTOBER 7, 1939.

[F. R. Doc. 39-3896; Filed, October 20, 1939, 2:55 p. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO FILL OF CONTAINER OF CANNED CHERRIES

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2) and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulation may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears,

and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 18, 1939, at 10 p. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of fill of container and specifying the form and manner of label statement of substandard fill of container for the food commonly known as canned cherries was convened, and was concluded at 11 a. m., on April 19, 1939. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and written argument.

5. Within the time announced at the hearing within which interested persons might file proposed findings of fact, written argument, or both, various interested persons file proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing.

6. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. The quantity of cherries which can be placed in a container varies, depending upon the method of packing and upon the shape, size, degree of maturity, and specific gravity of the cherries. (R. pp. 25, 39, 46–47)

2. With the exception of comparatively few slack filled cans, canned cherries as they appear on the market at the present time contain the maximum quantity of cherries which, using reasonably good factory practice, can be placed and sealed in each can and processed by heat to prevent spoilage, without crushing the cherries. (R. pp. 27–29, 41–42, 46)

3. The maximum quantity of cherries varies, depending on the size of the container, the method of packing, the form, size, firmness of the cherries, the necessity for having sufficient liquid to insure proper processing, and other factors. (R. pp. 28–29)

4. The can should contain the greatest number of cherries the canner can place therein and properly seal and process. (R. pp. 28, 41–42, 56)

5. Knowing the form, shape, size, degree of maturity, and comparative specific gravity of the cherries in any lot being canned, canners know the greatest amount of cherries which can be placed in a can of any given size without damage, and canners employ inspectors to insure proper filling. (R. pp. 28, 29)

6. None of the various methods which have been studied for objective measurements of fill have shown any uniform correlation between the quantity of cherries put in and the quantity of cherries cut out. (R. pp. 46–47, 61, 88–90, 92–94). Assurance to the consumer of a can full of cherries can be obtained only by a requirement as to the quantity put in the container. (R. pp. 27–29, 41)

7. It is necessary and desirable in the interest of the consumer that canned cherries falling below a standard of fill of container bear on the label a simple and understandable statement of that fact. (R. pp. 30, 46) "Below Standard in Fill" is such a statement. (R. pp. 30, 46)

8. If canned cherries fall below a standard of fill of container, it is necessary and desirable in the interest of the consumer that the label bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement should be in 12-point type; if such quantity is 1 pound or more, the statement should be in 14-point type. Such statement should be enclosed within lines not less than 6 points in width, forming a rectangle; but if the cherries also fall below the standard of quality for canned cherries and bear the label statement of substandard quality for canned cherries, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Cherries" or any pictorial representation of a cherry is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. pp. 30–31, 46)

9. The substandard statement now required by the regulations issued pursuant to the McNary-Mapes Amendment is "Below U. S. Standard" followed by "Slack Fill", in the case of excess head space; and by the statement "Contains Excessive Added Liquid", in the case of excessive packing medium. These statements are required to appear in substantially the same form as herein proposed. (R. p. 31)

10. The phrase "Below Standard", as proposed, differs from the present requirement "Below U. S. Standard". The term "U. S." on a food product has been found to imply to consumers that the product has been packed under the supervision of the U. S. Government. The phrase "In Fill", as proposed, differs from the present requirement of "Slack Fill" or "Contains Excessive Added Liquid". The standard herein proposed is based on a can filled to its maximum capacity with fruit. If adopted and met, the headspace will not be excessive, nor will there be excessive liquid present. If not met, the expression "Below Standard in Fill" is simpler and more understandable in describing a product which fails to meet a standard based on the amount of cherries present rather than on the amount of liquid and cherries or the quantity of liquid present. (R. pp. 32, 56, 57–58)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of fill of container and the form and manner of label statement of substandard fill of container for the food commonly known as canned cherries are hereby suggested to be promulgated as a regulation:

§ 27.032 *Canned cherries—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned cherries is the maximum quantity of cherries which can be sealed in the container and processed by heat to prevent spoilage, without crushing such cherries.

(b) If canned cherries fall below the standard of fill of container prescribed in subsection (a) the label shall bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines not less than 6 points in width, forming a rectangle; but if the statement specified in section 27.031 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Cherries" or any pictorial representation of a cherry is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

OCTOBER 10, 1939.

[F. R. Doc. 39-3892; Filed October 20, 1939; 2:53 p. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO QUALITY OF CANNED CHERRIES

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 18, 1939, at 2:15 p. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of quality and specifying the form and manner of label statement of substandard quality for the food commonly known as canned cherries was convened, and at 10 p. m., was adjourned and was resumed at 11 a. m., on April 19, 1939, and was concluded at 11:15 a. m., on the same date. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. Within the time announced at the hearing within which interested persons might file written argument, proposed findings of fact, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing, which, if granted, would modify the proposal contained in the FEDERAL REGISTER.

6. There was controversy with respect to (a) tolerance for pits in pitted cherries, (b) tolerance for blemishes.

7. Testimony was introduced tracing the development of standards with reference to the McNary-Mapes Amendment to the Food and Drugs Act of 1906, passed in 1931, and the formulation of a standard of quality under that amendment.

Various factors which go to make up a quality standard were considered, together with objective measurements for determining such factors. These factors and objective measurements were made up after conferences with canners, with the trade, with consumers and with expert graders in all sections of the country. Factors which enter into the quality of canned cherries differ somewhat, depending on the form of the units of the cherry ingredient. Cherries are in two forms of units, pitted and unpitted. Relative freedom from pits in pitted cherries is a factor of quality. The size of the units is a factor in the case of unpitted cherries. Uniformity of size of units is a factor in the case of unpitted cherries. Percentage of total weight which is cherry flesh is a factor in the case of unpitted cherries. Relative freedom from blemishes is a factor.

Changes have been made in the standards of quality since the first promulgation of quality standards under the McNary-Mapes Amendment. In 1931, the standard of quality for canned cherries, including both sweet and red sour cherries was promulgated. The standard was amended in 1932 and 1935. In April, 1937, separate standards of quality for canned red sour pitted cherries and canned sweet cherries were promulgated. In July, 1937, the standard for canned sweet cherries was again amended. Separate standards for the two types of cherries have been in effect since that time.

It appears from the evidence that in the separate standard of quality for canned red sour pitted cherries promulgated in 1937, the question of blemishes was defined as follows:

"The fruit is unblemished if 85 per cent or more of the units in the container are free from such defects as limb rubs, scars, scabs, windwhips, brown spots, or other unsightly blemishes. Units showing a skin discoloration having a total area of a circle three-sixteenths of an inch in diameter or less with no perceptible discoloration of the fruit tissue under the skin will not be considered as blemished."

The change from a tolerance of 20% to one of 15% was made because a majority of the canners at the informal hearing held preliminary to promulgating the standard complained that a 20% tolerance was too liberal and that 15%, with the allowance for small blemishes, could be met commercially. Various witnesses suggested a tolerance of 20% for blemishes of all types for all cherries without any definition of blemishes. Such recommendation would leave to conjecture what constituted a blemish.

8. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the

Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested findings

1. Factors which go to make up quality in canned cherries are freedom from pits in the case of pitted cherries; minimum size of units in the case of unpitted cherries; uniformity of size of units in the case of unpitted cherries; percentage of total weight which is cherry flesh in the case of unpitted cherries; freedom from blemishes (R. pp. 23–24, 92–93).

2. Pits or pieces of pits are hard and even in limited amounts are very objectionable in pitted cherries. (R. pp. 24, 93, 112) For this reason, a tolerance on pits in pitted cherries is necessary, and a maximum tolerance of not more than one pit for each 20 ounces of finished canned cherries is reasonable. A piece of pit equal to or larger than one-half pit is counted as one pit, and a piece of pit smaller than one-half pit is counted as one-half pit. (R. pp. 24, 25, 26, 56–57, 73, 83, 93)

3. In counting pits, a sample of at least 24 pounds should be taken at random from a lot of canned cherries. (R. pp. 39, 40)

4. Minimum size of units is a factor of quality if the cherries are unpitted. It is not a factor of quality in the case of pitted cherries, because pitted cherries tend to collapse when cooked, causing wide discrepancies in size in the same container. (R. pp. 26, 93)

5. Canned cherries of standard quality as they appear on the market today are prepared from normal size cherries which have certain size ranges. (R. pp. 27, 93) Cherries smaller than normal size are commonly packed as substandard cherries at the present time. (R. pp. 27, 93)

6. Normal size cherries of any variety do not weigh less than 1/10 ounce. (R. pp. 27, 93) This minimum is less than the minimum heretofore adopted by the packers of most of the cherries canned in the United States. (R. pp. 27–28, 93)

7. Such weights are determinable as follows: The unit is placed on a screen and the liquid is allowed to drain therefrom for two minutes. The unit is then weighed. (R. pp. 28, 93)

8. Uniformity of size of units is a factor of quality in the case of unpitted cherries, but it is not a factor in the case of pitted cherries. Variations in size in the case of pitted cherries, which collapse when cooked, are not apparent in the same can or portion and are not objectionable to consumers. (R. pp. 28, 93)

9. Uniformity of size of units is necessary in the case of unpitted cherries in order to prevent variant numbers of units in servings of desserts on the same table. (R. pp. 28, 93)

10. Unpitted cherries are reasonably uniform in size if the weight of the largest unit does not exceed twice the weight of the smallest unit in the container. (R. pp. 29, 93)

11. Weights for uniformity of size of unpitted cherries are determined in the same manner as weights for minimum size of such cherries. (R. pp. 29, 93)

12. The percentage of the total weight of cherries which is cherry flesh is a factor of quality in the case of unpitted cherries. Cherry pits are inedible, and if the pits are relatively large so that the percentage of flesh is low, the consumer obtains a relatively small amount of edible cherry flesh. (R. pp. 29–30, 93)

13. In canned cherries of standard quality, the maximum percentage of pits present is not more than 12 percent by weight of the drained cherries. Cherries which contain pits in excess of 12 percent of the weight of the drained cherries are commonly known as substandard cherries at the present time. (R. pp. 30, 93)

14. The proportion of pits to the drained weight of the cherries is determinable as follows:

Tilt the opened container so as to distribute the contents over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds, or 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is No. 8 woven wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves", published October 25, 1938, by U. S. Department of Commerce, National Bureau of Standards. Without shifting the cherries, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and drained cherries. The weight so found, less the weight of the sieve, shall be considered to be the weight of drained cherries. Pit the cherries and wash the pits free from adhering flesh. Drain and weigh the pits by the method prescribed above. Divide the weight of pits so found by the weight of drained cherries, and multiply by 100. (R. pp. 30–31, 93)

15. Freedom from blemishes such as scab, hail injury, discoloration, or other abnormalities is a factor of quality in canned cherries. (R. pp. 31, 54–56, 59–65, 81, 93–94, 101–102, 159)

16. Canned cherries are relatively free from blemishes if not more than 15 percent of the units are blemished. When reasonable efforts are made to remove blemished cherries, the number can be kept well below 15 percent, but certain types of blemishes not readily apparent in the raw fruit appear in the cooked cherries. A unit showing skin discoloration having an aggregate area not exceeding that of a circle 3/16 inch in diameter and not extending into the fruit tissue is not considered as blemished. (R. pp. 31–32, 54–55, 72, 81, 93–96, 101, 106–109, 119–123, 125–127, 159)

17. A maximum tolerance of 15 percent of blemished cherries is reasonable and makes due allowance for blemishes not readily apparent. (R. pp. 32, 93–94)

18. A canner employing good commercial practice can meet each of the foregoing factors of quality in canned cherries without difficulty. (R. pp. 32, 94)

19. Each factor of quality takes into consideration and makes due allowance for the differing characteristics of the several varieties of cherries. All varieties can meet the foregoing factors of quality without undue difficulty under good commercial practice. (R. pp. 35, 96)

20. Except for the period from April, 1937, to the present time, a single standard of quality for all varieties of canned cherries has been in effect since 1931 under the McNary-Mapes Amendment to the Food and Drugs Act of 1906. (R. pp. 35–36)

21. The original standard promulgated pursuant to the provisions of the McNary-Mapes Amendment was amended in 1932 and again in 1935, and in 1937 separate standards of quality for canned red sour pitted cherries and canned sweet cherries were promulgated. (R. p. 35) The separate standard for canned sweet cherries was again amended in July, 1937. (R. pp. 35–36)

22. Each of the factors hereinbefore referred to has been in effect since 1931 in the standards of quality for canned cherries promulgated by the Secretary of Agriculture pursuant to the McNary-Mapes Amendment to the Food and Drugs Act of 1906, except that the factor of freedom from pits was not embraced in the standard in effect from 1931 to 1932. (R. p. 36)

23. The requirement with respect to freedom from pits promulgated in 1932 pursuant to the McNary-Mapes Amendment provided that not more than one cherry pit or its equivalent in broken pieces of shell per each 10 ounces of net contents shall be present. (R. pp. 36–37) In April, 1937, a separate standard for canned red sour pitted cherries was promulgated which provided that such canned cherries contain not more than one cherry pit or its equivalent in broken pieces of shell per 20 ounces of net contents. (R. p. 37) The standard promulgated for canned sweet cherries in July, 1937, provided for the reduction of the tolerance on pits from one pit or its equivalent in broken pieces of shell per each 10 ounces of net contents to one cherry pit or its equivalent in broken pieces of shell for each 20 ounces of net contents. (R. p. 38)

24. Canners regarded the tolerance of one pit to each 10 ounces of canned cherries as too liberal and requested its reduction to a tolerance of one pit to

each 20 ounces of canned cherries. (R. pp. 38–39, 123–125)

25. The tolerance of one pit to each 20 ounces net weight is the present standard under the McNary-Mapes Amendment and differs from the proposal contained in Government's Exhibit No. 1 in two respects, namely, that a piece of pit shell equal to or larger than one-half pit be counted as one pit and a piece of pit shell smaller than one-half pit be counted as one-half pit instead of calculating pieces of pit as the equivalent of a whole pit, and that the tolerance for pits be based on the examination of a sample of not less than 24 pounds rather than on a single can. Small pieces of pit shell are as objectionable as the whole pit. (R. pp. 40, 127–130)

26. There has been no change in the provisions of the standards promulgated under the McNary-Mapes Amendment for minimum size of units. (R. p. 41)

27. It is not desirable to change the present McNary-Mapes standard with respect to minimum size of units. (R. p. 41)

28. The original standard promulgated pursuant to the McNary-Mapes Amendment contained a provision with respect to uniformity of size that the cherries should be considered uniform when 80 percent of the units passed through a circular opening 25 percent larger in diameter than that through which the smallest unit would pass. In 1932, the standard was amended so as to place the requirement on a weight basis and it was provided that the units should be considered uniform in size if the weight of the piece of largest size in the can was not more than 80 percent in excess of the weight of the smallest piece in the can. In 1937, the standard was again amended, reducing the requirement for uniformity with a provision that the units were uniform in size if the weight of the piece of the largest size in the can was not more than twice the weight of the smallest piece in the can. (R. pp. 42–43)

29. No variation from the present McNary-Mapes requirement with respect to uniformity of size is desirable. (R. p. 43)

30. The standard of quality for canned cherries promulgated under the McNary-Mapes Amendment in 1931 contained a provision that the weight of cherry flesh should be not less than 88 percent of the total weight of the same cherries. (R. p. 43)

31. No variation from the present McNary-Mapes requirement with respect to percentage of cherry flesh is desirable. (R. p. 43)

32. No changes in the present McNary-Mapes standard with respect to blemishes are desirable, except the reduction of the tolerance for blemished units from 20 percent to 15 percent in the case of sweet cherries. (R. p. 44)

33. It is necessary and desirable in the interest of the consumer that a simple and understandable statement of substandard quality be placed on the label of canned cherries falling below a standard of quality. "Below Standard in Quality" qualified by an explanation of wherein the product falls below standard in quality is such a statement. (R. pp. 48, 49) If the cherries fail to comply with the tolerance for pits, the qualifying statement "Partially Pitted" furnishes an accurate explanation of the reason the product is below standard. (R. pp. 38, 49) Likewise, the qualifying statements "Small", if under minimum size for unpitted cherries; "Mixed Sizes", if not uniform in size; "Thin Fleshed", if the percentage of pits is excessive; "Blemished", if over the tolerance for blemishes; respectively furnish accurate explanations of the reason the product is below standard. (R. pp. 49, 173–175)

34. It is necessary and desirable in the interest of the consumer that such statement immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Cherries", together with words and statements required or authorized to appear with such name by the definition and standard of identity for canned cherries. (R. p. 49)

35. Such label requirements for cherries of substandard quality would not be practicable under good commercial practices in instances where the product fell below the standard in several respects. (R. p. 49)

36. In such event, the statement "Below Standard in Quality Good Food—Not High Grade" would be reasonable, would be informative to the consumer, and would promote honesty and fair dealing in the interest of the consumer. (R. p. 36)

37. It is reasonable and it would promote honesty and fair dealing in the interest of the consumer to have such statement printed in two lines of Cheltenham bold condensed caps, the words "Below Standard in Quality" to constitute the first line, and the second to immediately follow. If the quantity of the contents of the container is less than 1 pound, such type of the first line should be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, such type of the first line should be 14-point, and of the second, 10-point. Such statement should be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Cherries" or any pictorial representation of a cherry is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase. (R. p. 50)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of quality and form and manner of label statement of substandard quality for the food commonly known as canned cherries is hereby suggested to be promulgated as a regulation:

§ 27.031 *Canned cherries—Quality; label statement of substandard quality.* (a) The standard of quality for canned cherries is as follows:

(1) In the case of pitted cherries, not more than 1 pit is present in each 20 ounces of canned cherries, as determined by the method prescribed in subsection (b) (1);

(2) In the case of unpitted cherries, the weight of each cherry in the container is not less than $\frac{1}{10}$ ounce;

(3) In the case of unpitted cherries, the weight of the largest cherry in the container is not more than twice the weight of the smallest cherry therein;

(4) In the case of unpitted cherries, the total weight of pits is not more than 12 percent of the weight of drained cherries, as determined by the method prescribed in subsection (b) (2); and

(5) Not more than 15 percent by count of the cherries in the container are blemished with scab, hail injury, discoloration, scar tissue, or other abnormality. A unit showing skin discoloration having an aggregate area not exceeding that of a circle $\frac{3}{16}$ inch in diameter and not extending into the fruit tissue shall not be considered as blemished.

(b) (1) Pitted canned cherries shall be tested by the following method to determine whether or not they comply with the requirements of clause (1) of subsection (a):

Take at random such number of containers as to have a total quantity of contents of at least 24 pounds. Open the containers and weigh the contents. Count the pits and pieces of pits in such total quantity. Count a piece of pit equal to or larger than one-half as one pit; count a smaller piece as one-half pit. From the combined weight of the contents of all the containers, calculate the average number of pits in each 20 ounces of canned cherries.

(2) Unpitted canned cherries shall be tested by the following method to determine whether or not they comply with the requirements of clause (4) of subsection (a):

Tilt the opened container so as to distribute the contents over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds, or 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is No. 8 woven wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves", published October 25, 1938, by U. S. Department of Commerce, National Bureau of Standards. Without shifting

the cherries, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and drained cherries. The weight so found, less the weight of the sieve, shall be considered to be the weight of drained cherries. Pit the cherries and wash the pits free from adhering flesh. Drain and weigh the pits by the method prescribed above. Divide the weight of pits so found by the weight of drained cherries, and multiply by 100.

(c) If the quality of canned cherries falls below the standard prescribed by subsection (a), the label [unless it bears the statement specified in subsection (d)] shall bear the statement "Below Standard in Quality ------", the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned cherries fail to meet, as follows: (1) "Partially Pitted"; (2) "Small"; (3) "Mixed Sizes"; (4) "Thin Fleshed"; (5) "Blemished". Such statement shall immediately and conspicuously precede or follow, without intervening, written, printed, or graphic matter, the name "Cherries" and the words and statements required or authorized to appear with such name by section 27.030 (b).

(d) In lieu of the statement or statements specified in subsection (c), the label may bear the statement "Below Standard in Quality Good Food—Not High Grade", printed in two lines of Cheltenham bold condensed caps. The words "Below Standard Quality" shall constitute the first line, and the second shall immediately follow. If the quantity of the contents of the container is less than 1 pound, the type of the first line shall be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, the type of the first line shall be 14-point, and of the second, 10-point. Such statement shall be enclosed within lines not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Cherries" or any pictorial representation of a cherry is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

OCTOBER 16, 1939.

[F. R. Doc. 39-3891; Filed, October 20, 1939; 2:53 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW OF DETERMINATION AND ORDER REEMPLOYMENT OF LEARNERS IN THE KNITTED WEAR INDUSTRY AT WAGES LOWER THAN THE MINIMUM WAGE APPLICABLE UNDER SECTION 6 OF THE FAIR LABOR STANDARDS ACT OF 1938

Whereas, the National Knitted Outerwear Association, The Underwear Institute, and sundry other parties having made application under Section 14 of the Fair Labor Standards Act of 1938 and regulations (Part 522—Regulations Applicable to Employment of Learners Pursuant to Section 14 of the Fair Labor Standards Act of 1938—Title 29, Labor, Chapter V—Wage and Hour Division) issued by the Administrator thereunder for permission to employ learners in the Knitted Wear Industry at wages lower than the minimum wage applicable under Section 6 of the Act, and

Whereas, after due notice a hearing was held on these applications before Merle D. Vincent, authorized representative of the Administrator, who was duly designated to preside at the hearing and to determine:

(a) What if any occupation or occupations in the Knitted Wear and Hosiery Industry require a learning period, and

(b) Whether it is necessary in order to prevent curtailment of opportunities for employment to provide for the employment of persons in occupations requiring a learning period at wage rates lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938, and

(c) If such necessity is found to exist, to determine at what wages lower than the minimum wage applicable under Section 6, such employment of learners shall be permitted, and with what limitations as to time, number, proportion and length of service; and

Whereas, the said Merle D. Vincent duly made findings of fact, copies of which were filed in the office of the Acting Administrator on October 20, 1939, and are there available for inspection by interested parties, and made the following determination and order:

"1. Effective on or after October 24, 1939, Special Certificates permitting employment of learners at subminimum rates as sewing machine and knitting machine operators in the knitted wear industry shall be issued upon the following terms to all plants in the industry making application therefor representing that experienced workers are not available to the plant, *unless* experienced workers are found to be available:

(a) Learners employed under the certificate shall not exceed 5 per cent of the total number of workers in the plant engaged in sewing machine and knitting machine operations in the knitted wear industry provided, however, that employment of as many as five learners may be authorized in any certificate.

(b) No learner shall be employed under the certificate longer than 8 weeks.

(c) Learners employed under the certificate shall be paid at a rate not less than 22½ cents an hour *and*, in plants where experienced operators are paid on a piecework rate, shall be paid at least the same piece-work rate and shall receive earnings paid on this rate if in excess of the 22½ cent minimum.

(d) Only learners shall be employed at a subminimum wage under the certificate and no learner shall be employed under the certificate unless hired when an experienced worker was not available.

(e) No learners shall be employed at a subminimum wage under the certificate until and unless the certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

2. Any special certificate issued pursuant to this order shall be cancelled as of the date of issue if it is found that such certificate was issued when experienced workers were available and shall be cancelled prospectively or as of the date of violation if it is found that any of its terms have been violated or that skilled workers have become available. No certificate issued pursuant to this order shall be valid after October 24, 1940.

3. In this order the term "learner" means a person who has not been previously employed for more than 8 weeks in the aggregate during the preceding three years upon sewing machine or knitting machine operations, respectively; and the term "knitted wear industry" includes men's, women's, infants' and children's knitted apparel and accessories, excepting gloves and hosiery."

Now, therefore, notice is hereby given that pursuant to Section 522.13 of the said regulations as amended, petitions for review of the action of the said authorized representative may be filed by interested parties within fifteen days after the publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D. C., this 23rd day of October 1939.

HAROLD D. JACOBS,
Acting Administrator.

[F. R. Doc. 39-3911; Filed, October 23, 1939; 12:25 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE HOSIERY INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Hosiery Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 (Hosiery Wage Order) are issued to the employers listed below effective October 24, 1939, until September 18, 1940, subject to the following terms:

OCCUPATIONS AND WAGE RATES

The employment of learners in the Hosiery Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

[*Here follows, in the original document, a table identical with that appearing on Page 3827 of the "Federal Register" for Thursday, September 7, 1939.*]

NUMBER OF LEARNERS

Not in excess of 5% of the total number of factory workers employed in the plant may be employed under any of these certificates, unless otherwise indicated hereinbelow.

NAME AND ADDRESS OF FIRM

American Full Fashioned Hosiery Mills, Inc., 125 State Street, Ephrata, Pennsylvania.

Haltom Hosiery Mill, Star, North Carolina (5 learners).

Hyman Hosiery Mill, Wm. L., Locust Street, Ephrata, Pennsylvania (2 learners).

These Special Certificates are issued ex parte under Section 14 of the said Act, Section 522.5 (b) of Regulations Part 522, as amended. For fifteen days following the publication of this notice the Administrator will receive detailed written objections to any of these Special Certificates and requests for hearing from interested persons. Upon due consideration of such objections as provided for in said Section 522.5 (b), such Special Certificates, or any of them, may be canceled as of the date of their issuance and if so canceled, reimbursement of all persons employed under such certificates must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

Signed at Washington, D. C., this 23rd day of October 1939.

MERLE D. VINCENT,
Chief Hearings and Exemptions Section.

[F. R. Doc. 39-3912; Filed, October 23, 1939: 12:44 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 is issued to the employer listed below effective October 24, 1939, until February 20, 1940, unless otherwise indicated, subject to the following terms and limited to the number of learners indicated opposite the employer's name:

OCCUPATIONS AND WAGE RATES

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than eight weeks experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experienced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour, but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employers that (a) experienced stitching machine operators are not available and (b) that he is actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment.

(4) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

(5) These Special Certificates are issued ex parte under Section 14 of the said Act and Section 522.5 (b) of the Regulations, Part 522, as amended. For fifteen days following the publication of this notice, the Administrator will receive detailed written objections as provided for in said Section 522.5 (b). Such Special Certificates, or any of them, may be cancelled as of the date of their issuance and, if so cancelled, reimbursement of all persons employed under such Certificates must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

NAME AND ADDRESS OF FIRM AND NUMBER OF LEARNERS

McKettrick-Williams, Inc., Portland, Maine, 30.

Signed at Washington, D. C., this 23rd day of October 1939.

MERLE D. VINCENT,
Chief Hearings and Exemption Section.

[F. R. Doc. 39-3913; Filed, October 23, 1939; 12:44 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued ex parte under Section 14 of the said Act, Section 522.5 (d) of Regulations Part 522, as amended, to the employers listed below effective October 24, 1939, until October 24, 1940, subject to the following terms:

OCCUPATIONS AND WAGE RATES

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than eight weeks experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experienced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour, but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employers that experienced stitching machine operators are not available.

(4) Any one of these Special Certificates shall be canceled as of the date of its issue if found that experienced workers were available when the Certificate was issued, and shall be canceled prospectively or as of the date of violation if found that any of its terms have been violated or that skilled workers have become available, and reimbursement of all persons employed under such Certificates must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

(5) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

NUMBER OF LEARNERS

Not in excess of 5% of the total number of stitching machine operators employed in the plant may be employed under any of these Certificates, unless otherwise indicated hereinbelow opposite the employer's name.

NAME AND ADDRESS OF FIRM

Baldwin Shirt Company, Parsons, Kansas (5 learners).

Berne Overall and Shirt Co., Berne, Indiana (5 learners).

Betty Jane Frocks, Kentucky and Hunt Streets, McKinney, Texas (5 learners).

Black Manufacturing Company, Seattle, Washington.

Blue Buckle Overall Co., Inc., Lynchburg, Virginia.

Clearfield Mills, Inc., Williamsport, Pennsylvania (5 learners).

Coopersmith, D., Milford, Delaware (5 learners).

D & I Shirt Company, Inc., 85 Willow Street, New Haven, Connecticut.

Gem Garment Company, Greencastle, Pennsylvania (5 learners).

General Sportswear Company, Ellenville, New York (5 learners).

Goldstone Brothers, Petaluma, California (5 learners).

H. Lang Company, River Falls, Wisconsin.

Manchester Pants Company, Manchester, Maryland.

Marso & Rodenborn Manufacturing Co., Fort Dodge, Iowa (5 learners).

Midland Garment Manufacturing Co., Nebraska City, Nebraska (5 learners).

N-R Garment Company, Walkersville, Maryland (5 learners).

Newport Dress Factory, Newport, Pennsylvania (5 learners).

Out-Dor Pants Company, 117 West Overland Street, El Paso, Texas (5 learners).

Peerless Knitting Mills, Lehighton, Pennsylvania.

Pella Overall Company, Pella, Iowa (5 learners).

Plymouth Manufacturing Company, Picayune, Mississippi (5 learners).

Press & Company, Sidney, 3rd and Plum Streets, Lemoyne, Pennsylvania (5 learners).

Quaker Maid Dress Co., Front and Chestnut Streets, Souderton, Pennsylvania (5 learners).

Regal Paper Company, Inc., South Jefferson, Pulaski, New York (5 learners).

Rombro Brothers, Mount Airy, Maryland (5 learners).

Royal Manufacturing Co., Washington, Georgia (5 learners).

S & B Manufacturing Company, Andalusia, Alabama.

Shawnee Garment Manufacturing Co., Shawnee, Oklahoma (1 learner).

Sherrod Shirt Co., High Point, North Carolina (5 learners).

Unity Shirt Company, 300 Seymour Avenue, Derby, Connecticut.

Utilitog Company, The, Warrensburg, Missouri (5 learners).

Valley Garment Co., Inc., McMechen, West Virginia.

Ware Shoals Manufacturing Co., Ware Shoals, South Carolina.

West Plains Garment Co., Inc., West Plains, Missouri (5 learners).

Andala Company, Andalusia, Alabama.

Appomattox Garment Co., Appomattox, Virginia (5 learners).

B and B Manufacturing Company, 100 North Rock Street, Shamokin, Pennsylvania (5 learners).

Belgrade Dress Company, 1107 Bridge Street, New Cumberland, Pennsylvania (5 learners).

Goidl Neckwear Manufacturing Co., Dallas, Texas (5 learners).

Natchez Fabricating Institute, Natchez, Mississippi (5 learners).

Mitchell Bros., Inc., Bridgeport, Connecticut.

Yoder, Mr. Irvin U., Reinerton, Pennsylvania (5 learners).

Berry Garment Mfg. Co., Columbus, Kansas (5 learners).

Fairy Form Manufacturing Co., Inc., Abilene, Texas (5 learners).

Signed at Washington, D. C., this 23rd day of October 1939.

MERLE D. VINCENT,
Chief, Hearings and Exemptions Section.

[F. R. Doc. 39-3914; Filed, October 23, 1939; 12:44 p. m.]

CIVIL AERONAUTICS AUTHORITY.

[Docket No. 234]

IN THE MATTER OF THE APPLICATIONS OF C. COBURN DARLING AND CANADIAN COLONIAL AIRWAYS, INC., FOR APPROVAL OF INTERLOCKING RELATIONSHIPS UNDER SECTION 409 (A) OF THE CIVIL AERONAUTICS ACT OF 1938

NOTICE OF POSTPONEMENT OF HEARING

Upon request of the applicant, Canadian Colonial Airways, Inc., public hearing in the above-entitled proceeding, now assigned for October 23, 1939,[1] is hereby postponed until November 8, 1939, 10 o'clock a. m. (Eastern Standard Time) in Conference Room C, Departmental Auditorium, Washington, D. C., before an Examiner.

Dated Washington, D. C., October 20, 1939.

By the Authority:

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-3903; Filed, October 21, 1939; 11:23 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. G-138]

IN THE MATTER OF COLORADO INTERSTATE GAS COMPANY

ORDER POSTPONING DATE OF HEARING

OCTOBER 20, 1939.

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

It appearing to the Commission that:

The Colorado Interstate Gas Company by letter dated October 17, 1939, has requested a postponement to November 20, 1939, of the date of hearing in this proceeding, which has previously been fixed for October 30, 1939, by order of the Commission adopted September 27, 1939;[1]

The Commission orders that:

(A) For good cause shown, the public hearing in this proceeding, now fixed for October 30, 1939, be and the same is hereby postponed to November 20, 1939, at the same time and place;

(B) The order of the Commission of September 27, 1939, in all other respects shall remain and continue in full force and effect.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39-3905; Filed, October 23, 1939; 9:21 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3403]

IN THE MATTER OF JACOB SIEGEL COMPANY, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., Section 41).

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, October 27, 1939, at ten o'clock in the forenoon of that day (eastern standard time) in the Chamber of Commerce Building, Philadelphia, Pennsylvania.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-3899; Filed, October 21, 1939; 9:45 a. m.]

[1] 4 F.R. 3741 DI.

[1] 4 F.R. 4105 DI.

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 19th day of October, A. D. 1939.

[File No. 32-173]

IN THE MATTER OF NORTHWESTERN ELECTRIC COMPANY

ORDER APPROVING AMENDED APPLICATION

Northwestern Electric Company, a direct subsidiary of American Power & Light Company, a registered holding company, and an indirect subsidiary of Electric Bond and Share Company, also a registered holding company, having filed an application, and amendments thereto, pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption from the provisions of Section 6 (a) of said Act regarding the issuance and sale of $6,700,000 principal amount First Mortgage Bonds, 4% Series due 1969, and $2,800,000 principal amount 4½% Debentures due 1959;

A public hearing having been held on said application, as amended, after appropriate notice;[1] the Commission having examined the record in this matter and having made and filed its findings herein;

It is ordered, That the application, as amended, of Northwestern Electric Company pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption from the provisions of Section 6 (a) of such Act regarding the issuance and sale of $6,700,000 principal amount First Mortgage Bonds, 4% Series due 1969, and $2,800,000 principal amount 4½% Debentures due 1959 be, and it hereby is, approved;

And it is further ordered, That the following conditions be, and they hereby are, imposed upon the applicant:

(1) That if the express authorization of the issue and sale of such securities by The Public Utilities Commissioner of Oregon or the Department of Public Service of Washington were to be revoked and otherwise terminated, this exemption shall immediately terminate without further order of this Commission;

(2) That the securities proposed to be issued shall be issued within 30 days after the date of our order;

(3) That within 10 days after the issue and sale of such securities applicant shall file with this Commission a certificate of notification showing that such issue and sale have been effected in accordance with the terms and conditions of and for the purposes represented by such application as amended and in accordance with the terms of this order; and

(4) That except as the Commission may by order, or orders, from time to time, permit, so long as any of the First Mortgage Bonds, 4% Series due 1969, and 4½% Debentures due 1959, are outstanding, applicant shall not, nor shall any successor or successors of applicant, declare or pay any dividends (other than dividends payable solely in shares of its stock and other than dividends in arrears on October 1, 1939, on the preferred stocks of the applicant) or make any other distribution on any shares of its preferred or common stock, or make any disbursement for the purchase or retirement of any of its stock, unless the amount expended or accrued by applicant (or any such successor or successors) for maintenance and repairs plus provisions for retirements out of income earned during the period from October 1, 1939, to the date of the proposed payment of such dividend or making of such distribution or disbursement shall equal fifteen per cent of the gross operating revenues of applicant (or any such successor or successors) during such period, after the deduction therefrom of an amount equal to the cost to applicant of electric energy, gas, steam and hot water purchased, and resold, and rentals paid for electric, gas, steam and hot water properties leased by applicant, and payments by applicant for the use of similar properties operated and maintained by others during such period; provided, however, that any transfers to the earned surplus of applicant from net income earned after September 30, 1939, over and above all such dividends, distributions, and disbursements (including the dividends then to be paid, or the distributions or disbursements then to be made) may be used as a credit to offset any deficiency in the amount expended or accrued for maintenance and repairs plus provisions for retirements out of income earned after September 30, 1939, in satisfying the aforementioned fifteen per cent requirement, and provided further that in no event shall the applicant declare or pay any dividends on its common stock except out of earnings accruing subsequent to said September 30, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3900; Filed, October 21, 1939; 10:59 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D. 1939.

[File No. 47-36]

IN THE MATTER OF EBASCO SERVICES INCORPORATED

ORDER APPROVING APPLICATION

Ebasco Services Incorporated, a New York corporation and a wholly-owned subsidiary of Electric Bond and Share Company, a registered holding company, having filed an application pursuant to Section 10 (a) (3) of the Public Utility Holding Company Act of 1935 for approval of the acquisition of the entire business, property and assets of its wholly-owned subsidiary, Phoenix Engineering Corporation;

A public hearing having been held upon said application, after appropriate notice;[1] no member of the public having appeared or having requested an opportunity to be heard; the Commission having examined the record in this matter and having filed its findings and opinion herein;

It is ordered, That the application of Ebasco Services Incorporated pursuant to Section 10 (a) (3) of the Act regarding the acquisition of the entire business, property and assets of Phoenix Engineering Corporation shall be and it hereby is approved;

And it is further ordered, That this order shall be subject to the following terms and conditions:

(a) That the acquisition involved in the application be carried out in accordance with the terms of and for the purposes set forth in the application filed herein;

(b) That the acquisition involved in the application be consummated within thirty days from the date of this order;

(c) That, within ten days after the consummation, of such acquisition, a certificate of notification showing the same to have been effected in accordance with the terms and conditions of and for the purposes represented by said application, and in accordance with the terms of this order shall be filed by the applicant;

(d) That nothing contained in these findings shall be deemed to constitute a finding of fact or a determination in respect of any issue or questions involved in the pending application of Ebasco Services Incorporated pursuant to Section 13 (b) of the Act for approval as a subsidiary service company, nor shall any such finding or determination be conclusive as to any issue or questions involved in any other proceeding pursuant to Section 13 of the Act, involving the applicant; and

(e) That we reserve jurisdiction over the other application filed by Ebasco Services Incorporated and over the application and declaration filed by Ebasco International Corporation in this consolidated proceeding.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3901; Filed, October 21, 1939; 10:59 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its

[1] 4 F.R. 4105 DI.

[1] 4 F.R. 2939 DI.

office in the City of Washington, D. C., on the 20th day of October, A. D. 1939.

[File No. 43-262]

IN THE MATTER OF GENERAL PUBLIC UTILITIES, INC.

NOTICE OF AND ORDER FOR HEARING

A declaration pursuant to section 7 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on November 9, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Lobingier or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before November 4, 1939.

The matter concerned herewith is in regard to an issue by the declarant, a registered holding company and a subsidiary of Community Power and Light Company, of the maximum amount of 16,318 shares of its common capital stock without par value for the purpose of paying a stock dividend to such stockholders as may elect to receive stock in lieu of cash in connection with the proposed dividend by declarant, to be payable at the option of the recipient either in cash at the rate of $1.50 per share or in additional no par common stock at the rate of one-tenth of a share of common stock for each presently outstanding share.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-3902; Filed, October 21, 1939; 10:59 a. m.]